# The Incorporated Accountants' Journal

## The Official Organ of

## The Society of Incorporated Accountants and Auditors

THE INCORPORATED ACCOUNTANTS' JOURNAL *is published monthly, on the first day of each month, at an Annual Subscription of* 12*s.* 6*d., which includes postage to all parts of the world. The price of a single copy is* 1*s.* 3*d., postage extra.*

*Communications respecting the general business of the paper to be addressed to the Secretary of the Society of Incorporated Accountants and Auditors, Incorporated Accountants' Hall, Victoria Embankment, London, W.C.2. Cheques and postal orders should be made payable to the Society, and crossed "Bank of England."*

*Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.*

Vol. XLV MARCH, 1934 No. 6

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# Professional Notes.

A FEW weeks ago, Mr. E. Cassleton Elliott, the President of the Society, met with an accident resulting in a slightly fractured ankle. We are glad to say that he is very much better, but he regrets that the accident has prevented him attending all the various meetings and functions in connection with the work of the Society both in London and the Provinces. He has now returned to the City, and we feel sure that all members will join with us in wishing him a speedy recovery.

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In the course of a lecture given last month to the Incorporated Accountants' London and District Society (which we publish in this issue), Mr. Raymond Needham, K.C., drew attention to the great changes which had taken place in recent years in the law relating to Income Tax, and to the difficulties under which the taxpayer laboured in his unequal contest with the Revenue officials. It was remarkable, he thought, that the taxpayer ever scored at all, and the fact that he occasionally did so appeared to be largely due to the assistance which he received from professional accountants. Mr. Needham went on to explain the principles underlying the decisions in a number of cases relating to casual profits, residence, the residue of trust estates, &c. In the short time at his disposal, the lecturer covered a wide range and dealt with each point very clearly and concisely.

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A Bill dealing with the amendment of the law relating to Arbitration has been introduced to the House of Lords by Lord Askwith, the President of the Institute of Arbitrators, who stated at the dinner of that institute held recently that he believed the Bill would be favourably considered as the Lord Chancellor had said he would welcome any comprehensive Bill dealing with the subject. The amendments of the law which are proposed in the Bill deal with the death or bankruptcy of any of the parties, the removal of arbitrators or umpires or the revocation of their appointment. Other amendments are designed to facilitate the despatch of business, and to grant power to arbitrators or umpires to order specific performance of contracts, and to make interim awards. There is also a provision regarding solicitors' costs, and the taxation of the fees of arbitrators and umpires. The text of the Bill, which has been read a second time in the House of Lords, will be found in another column.

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The position with regard to the basis of sur-tax liability is getting more and more involved and the recent decision of the House of Lords in *Neumann* v. *Commissioners of Inland Revenue* adds to the complications. It will be remembered that certain dividends distributed by Salisbury House Estate Limited were held not to be liable

to income tax. These dividends represented the excess of its rental income over the amounts on which it had been assessed to income tax, the general grounds of the decision (by the House of Lords) being that profits covered by Schedule A could under no circumstances be the subject of an assessment under Schedule D. One of the shareholders of the company, Mr. Neumann, thereupon claimed that the amount of dividend received by him should not be included in computing his total income for sur-tax purposes, but the House of Lords has now decided that the amount so received is assessable. It is difficult to understand how this conclusion can be justified in view of the provisions of the Income Tax Acts.

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Sect. 42 (4) of the Finance Act, 1927, provides that where an assessment to income tax at the standard rate has become final and conclusive for any year, it shall also be final and conclusive for the purpose of the sur-tax income for that year. Further, the charging section which appears in the Finance Act each year in respect of sur-tax describes the tax as a higher rate of income tax. For example, sect. 28 of the Finance Act, 1933, the marginal heading of which is "Higher rates of Income Tax," enacts that "Income Tax for the year 1932-33 shall be charged in the case of an individual whose total income from all sources exceeded £2,000 at the same higher rates in respect of the excess over £2,000 as were charged for the year 1931-32." In view of these provisions it is difficult to understand how an amount of income which has not been assessed to income tax can be liable to assessment to sur-tax—in the first place because the income tax assessment is final and conclusive as the basis of sur-tax and no income tax was in fact borne; and, in the second place, because sur-tax is a higher rate of income tax and can, therefore, only be calculated on the income on which income tax was assessed.

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A further inconsistency arises in connection with the decision in the *Neumann* case, namely, that the House of Lords has held that the figure in dispute is to be treated as gross and not net. This implies that in the view of the Court it has not borne income tax, either directly or by presumption, and therefore makes it the more inexplicable that it should be liable to sur-tax. Had the decision been based on an assumption that the amount in dispute was deemed to be assessed to income tax in connection with the Schedule A assessment, the decision would have been more logical. It is well known that in the case of an individual who owns property there is never any attempt to impose liability for sur-tax beyond the amount of the Schedule A assessment, and there does not seem to be any valid reason why liability should arise merely because the income is derived through a company.

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A point of some interest arose in connection with the affairs of the Darlington Rustless Steel and Iron Co. Limited, where two opposing petitions came before the Court, one by a creditor for the winding-up of the company, and the other by the company itself asking for an order sanctioning a scheme of arrangement. The scheme, it appeared, was approved by a majority vote, and the majority was obtained by including votes of a creditor in respect not only of its existing debt, but also of a prospective claim for royalties. It was admitted that if the prospective claim had been excluded the resolution approving the scheme could not have been carried. On behalf of the company it was submitted that a creditor could prove in the winding-up for prospective royalties as a liability of the company, and that therefore the scheme was properly sanctioned, but Mr. Justice Eve considered it was quite wrong to admit such a vote. The petition for the approval of the scheme was accordingly dismissed and an order made for the compulsory winding-up of the company.

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The French Senate's Committee on Legislation has recommended important modifications in French company law, amongst which are the following:—

(1) That the audit of a company's accounts shall not, under heavy penalties, be done by any person who is related to any Director, Manager, interested person or salaried employee connected with the company.
(2) That the auditors shall be appointed by the District Tribunal of Commerce.
(3) That no person shall act as a public auditor of company accounts unless he holds a diploma issued by the Ministry of Commerce.
(4) That the auditor's remuneration shall be fixed not by the company, but by the Tribunal of Commerce.
(5) That no person may become a Director of more than six companies at one and the same time, and a Director of a subsidiary company may only receive remuneration from the parent company.

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It is reported that the Commonwealth Government of Australia has amended sect. 20 (2) (*b*) of the Income Tax Assessment Act in such

a way as is expected to avoid any further trouble in regard to liability for absentee tax in respect of interest on debentures raised in London on behalf of Australian companies. The paragraph under which the difficulty arose has been entirely repealed and a new one substituted which is calculated to have the effect of carrying exemption from tax under the section in so far as interest payable on debentures raised in this country is concerned. The trouble, it may be remembered, arose in connection with the affairs of the Metropolitan Gas Company of Melbourne, which made an issue of debentures in London, and the debenture holders found that, on the receipt of their interest payment last year, a deduction had been made on account of Australian absentee tax.

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A report has been made to the Minister of Health by the Departmental Committee appointed to consider the qualifications, recruitment, training, and promotion of Local Government Officers. As regards the qualifications of the principal officers the Committee, on the whole, are not prepared to say that any radical change in the existing system of appointing technically qualified officers to the principal positions is desirable or practicable, but they think that in the past local authorities have not laid sufficient stress on the administrative qualifications. As regards the field of recruitment, the opinion is expressed that in some cases a better technical training can be had in a private than in a public office, and that accordingly local authorities should look to all available sources and be prepared to take the best qualified man, whether from inside or outside the service. In this connection, the training of Incorporated Accountants is mentioned.

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In the view of the Committee it is objectionable that officers of local authorities should be permitted to receive fees for articled clerks. "Every officer," they say, "should be paid a sufficient inclusive salary and any fees necessarily received should be paid over to the authority." It is recommended that rules should be made providing that no premium should be required, but that pupils should be selected, whether from inside or outside the office, solely according to their merits. At the same time, although no fees would be permitted, officers would in fact be expected to take pupils, the selection by the principal officer being subject to the approval of the local authority.

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Referring to the examination in local government accountancy held by the Institute of Municipal Treasurers and Accountants, the Committee consider that there is a danger of the municipal qualification being on too narrow a basis to secure a sufficiently thorough training. They therefore recommend that consideration should be given to the question whether it would not be preferable for local government officers to hold a general qualification, adding where necessary a special qualification appropriate to local government. This we believe is already done in many cases. It is also suggested that in order to bring University graduates into local government service, the larger authorities should find places for a small number of untrained graduates.

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According to the report of the National Insurance Audit Department on the audit during 1933 of the Health Insurance Funds, the certified accounts of approved societies and branches issued during the year numbered 6,574, involving payments of nearly £27,000,000. In 1,950 cases these accounts were certified subject to reservations, and it is stated that "the administrative and accounting work of societies and branches is still defective in certain respects in which reasonable care would avoid the ground for audit objection, and there is still undue reliance upon the audit staff for correction of defects." There were 22 special reports on fraud, failure to account, and the withholding of funds for a prolonged period, involving sums amounting to £586; whilst the auditors were unable to certify as admissible sickness and disablement benefits to the amount of £11,435, maternity benefit £2,778, and additional benefits £1,551. The staff of the Department, which numbered 417, includes 82 Chartered and Incorporated Accountants.

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A Committee has been appointed by the Canadian House of Commons to investigate business methods in the Dominions. The Committee is to give particular attention to mass buying by department and chain stores and the use of that power to crush the small trader out of existence; the watering of stock and the financial methods employed in the flotation of industrial companies. Attention is also to be given to the evasion of the minimum wage law. It is stated that in Canada "big business" has long been regarded with dislike and suspicion almost as much as in the United States, and the recent disclosures there have created additional interest in the investigations which the Canadian Government Committee are instructed to carry out.

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The Administration Bill for the regulation of Stock Exchanges, which has been introduced

into the American Senate, is of a drastic character. The American President, in a message to Congress, said it should be their national policy "to restrict as far as possible the use of the security and commodity exchanges for purely speculative operations," and declared that "naked speculation has been made far too alluring and far too easy for those who could and for those who could not afford to gamble."

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Amongst the provisions of the Bill are the following: That purchases made through members of exchanges must be secured by a margin of at least 60 per cent.; that exchange members must not borrow on any security registered on the Stock Exchange except from a member bank of the Federal Reserve System and must not borrow on securities held for a customer without the customer's consent. The Bill makes it a criminal offence to manipulate security prices; to corner the supply of any security; to trade in options or to spread rumours or misleading information. It also compels the disclosure of holdings and dealings of all directors, officers and principal shareholders of any registered company; and profits made by speculation and short selling by such persons are to be recoverable by the company. It is anticipated that the Bill will meet with strong opposition.

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Speaking at the annual meeting of the Liverpool Investment Building Society, of which Mr. C. Hewetson Nelson, F.S.A.A., is chairman, Sir Josiah Stamp said that since the War the building society movement had come definitely into the main stream of financial institutions and influences, and no complete financial story could be told and no prophesies indulged in without taking into account the position of the vast funds that flowed into and out of the building societies.

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Referring to financial experiments in America, Sir Josiah said it was characteristic of the whole recovery programme that whenever cause and effect were linked the effect was worked upon to produce the cause just as freely as the cause to produce the effect. The one missing factor was confidence to borrow and to lend, and if the gold buying policy was only coloured water in a medicine bottle, it would be useful if it could create faith, but so far it had done practically nothing. Referring to the various experiments that had been tried, he thought that the President of the United States, pushing all the buttons in turn, might ultimately touch the one that could ring the bell.

## POWERS OF AN EXECUTOR BEFORE PROBATE.

AN executor derives his title and authority from the will of the testator and not from any grant of probate, whilst an administrator derives his title and authority only under the grant of letters of administration. In the case of a will the property vests in the executors on the death of the testator, whereas no property vests in the administrator until letters of administration have been taken out.

In *Williams on Executors* it is said that an executor, before he proves the will, may do almost all the acts which are incident to his office, except only some of those which relate to suits. Thus he may seize and take into his hands any of the testator's effects, and he may enter peaceably into the house of the heir for that purpose, and take specialties and other securities for the debts due to the deceased. He may pay, or take releases of, debts owing from the estate, and he may receive or release debts which are owing to it; and distrain for rent due to the testator. And although he should die, after any of these acts are done, without proving the will, yet these acts will stand firm and good. So, if an executor assents to a legacy, and dies before probate, yet the assent is perfectly good. Similarly, all payments made to him are good, and cannot be defeated, even if he should die and never prove the will. In a word, the executor's death before proving the will determines the executorship, but does not avoid it.

An executor can properly act at once, he can collect the testator's goods, receive and give discharge for debts due, and alien the goods, including chattels real, in due course of administration, subject always to the condition that he will some time or another have to satisfy the Court that has jurisdiction over the subject-matter that there is a will and that he is the executor. But till he has proved it, or till it has been proved to the Court, till it has become *probatum*, his title is not certain, and in that way is not complete.

In *Re Stevens* (1897) executors appointed by a will did not obtain probate of the will for seven years after the testator's death, when probate was granted to one of them alone. The executors could not obtain payment of the money due upon a policy of insurance on the testator's life until the will had been proved, but the money was then paid in full, with interest at the rate of 1 per cent. per annum. Meanwhile, the executors had had to pay out of the estate interest at the

rate of 5 per cent. per annum upon a debt of the testator, which was secured by a mortgage of the policy. It was held that the executors could not be ordered to account on the footing of wilful default by reason of this loss of interest.

Although there are certain acts which an executor may do without probate, and certain cases in which he may take proceedings founded upon his own possession of the property of the testator, yet in the above case the executors could not have obtained judgment for payment of the policy money before probate. Although the insurance company could safely have paid the executors before probate, the executors could not have compelled them to do so.

An executor before probate cannot maintain an action unless founded on actual possession; he may, however, commence proceedings up to the time the production of probate is necessary. The personal property of the testator, including all rights of action, vests in the executor upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the Court, he is allowed to prove his title. An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant.

A creditor of a deceased debtor cannot sue a person named as executor in the will of the deceased unless he has either administered or obtained a grant of probate, and a sale in execution of a judgment obtained against such person does not bind the deceased's estate. Letters of administration, even if irregularly granted, are valid until revoked (*Mohamamidu Mohideen Hadjiar* v. *Pitchey*, 1894).

Where a person is appointed an executor he becomes a personal representative at the death of the testator without having to wait for probate of the will. In *Kelsey* v. *Kelsey* (1922), under a partnership deed the surviving partner had an option of acquiring the deceased partner's interest at a valuation on his giving to the personal representatives of the deceased partner notice within three months from the death of such partner. The notice was given within the time, but before the executors had obtained probate. It was held that the notice was properly given, and that the option had been duly exercised.

An executor may be a petitioning creditor in bankruptcy, but he must obtain probate before he can get a receiving order, and apparently the executor of a creditor of a company may present a winding-up petition under the Companies Act before he has obtained probate, it being sufficient if he has obtained probate before the hearing of the petition.

## MATERIAL AND VITAL TERMS IN A CONTRACT.

FEW questions arising out of breach of contract are at once so common and so difficult as those deriving from the failure of a party to perform one or more of a number of terms, conditions or obligations imposed by a contract. Breach of a contractual undertaking may vary from a failure in performance going to the root of the bargain, to a mere trivial failure which can be compensated for without much difficulty whilst preserving the contractual arrangements as a whole. A solution to the difficulty arising out of any particular contract is more easily sought if the distinction is borne in mind between dependent and independent conditions.

In all cases where breach of one of several conditions in a contract is in question, it is to be noted that the real issue is: Can that condition which has been broken have been regarded as independent of the others, separable from them, and not vital to the preservation of the contract as a whole? The real essence of the matter is this: Has the party guilty of a breach indicated by his failure to fulfil a particular term that he has abandoned his intention to execute the contract? Such an indication cannot normally be deduced from failure to fulfil an independent term; for by its very nature the breach of an independent term cannot inflict fatal injury upon the rest of the body of the contract.

Yet a condition or term which is not separable and independent may be broken and the contract still remain enforceable. The condition or term broken must be not merely a material one—as is often wrongly supposed—but a vital one. Every vital term is, of course, material, but not every material term is vital. Hence, where it is alleged that a condition of a contract has been broken so as to entitle the party making the allegation for his part to consider himself no longer bound by the contract, *i.e.*, that the condition broken was material to the contract, the tribunal adjudicating must weigh in the balance the importance of that condition compared with the remainder of the terms of the contract. The distinction, in other words, may be said to lie between an *important* condition on the one hand—which does not necessarily destroy the contract as

a whole—and one of the *most important* conditions on the other hand—which almost certainly will be sufficient to destroy the whole contract.

Breaches of terms or conditions in contracts which may require interpretation in this connection include such as may, at first sight, appear to have reference to subsidiary or incidental matters, *e.g.*, terms specifying time or place of delivery, mode of packing goods, medium of transport, and the like. The safest course to adopt, naturally, would be for the parties themselves to specify in their contract which of its terms are to be deemed vital, but frequently this is not practicable, especially as it is seldom possible to foresee and provide for every conceivable manner in which a contract may be broken. As with all other aspects of contract, a reasonable attitude must be adopted by parties who seek the aid of the law courts.

The case of *Huntoon Company* v. *Kolynos* as it was presented before the Court of Appeal in 1930 illustrates the above principles very well. The Huntoon Company had obtained, in 1925, an assignment of a patent, granted in 1919, to one William Huntoon, in respect of a collapsible tube used for containing toothpastes, paints and other commodities of a similar form. The patent consisted of a combination of three parts, none of which was protected by patent, viz: (*a*) a collapsible tube fitted with a hinge knuckle; (*b*) a closure cap; and (*c*) a spring form. In 1923 William Huntoon had granted to the defendants an exclusive right to manufacture, use and sell his collapsible tube; he reserved to himself, however, the exclusive right to manufacture the spring form during the life of the patent. The right so granted to the defendants was contained in a contract which comprised a number of terms, and this action was brought by the plaintiffs in respect of alleged breaches by the defendants of terms contained in that contract. Those terms, so far as relevant to the issues before the Court, were as follows:—

1. The defendants undertook to buy from Huntoon all the spring forms required by them in manufacturing under their licence.

2. The defendants were entitled to grant a sub-licence for the manufacture of the tubes to two specified firms, one of which was the John Dale Manufacturing Company.

3. All tubes sold by the defendants were to be marked clearly with Huntoon's registered patent number.

4. If any infringements of the patent were discovered or suspected, Huntoon undertook to prosecute at his own cost appropriate legal proceedings, or, alternatively, to allow the defendants to prosecute in his name and at his expense.

5. The defendants undertook to order from Huntoon at an agreed price not less than 20,000 gross of the spring forms per annum; if the tubes were manufactured under sub-licence (as provided for under condition 2), Huntoon was to be paid for the spring forms manufactured for such tubes as supplied to the defendants by the sub-licensees.

The plaintiffs complained that the defendants had purchased from the John Dale Manufacturing Company a quantity of tubes of a slightly modified pattern together with spring forms of a slightly modified pattern—both so modified as to constitute infringement of Huntoon's patent, thus failing to fulfil condition 1 of the contract. Further, it was alleged against the defendants that they had committed breaches of condition 3 of their contract, in that they had sold tubes not stamped with Huntoon's registered patent number.

The defendants denied the allegations of infringement by the John Dale Manufacturing Company, and challenged the plaintiffs to take proceedings pursuant to condition 4 of the contract against the John Dale Manufacturing Company. The plaintiffs refused to take action against that company, but, instead, took proceedings against the defendants themselves. The defendants then took up the attitude that since the plaintiffs had declined to take proceedings against the John Dale Manufacturing Company as alleged infringers of the patent they had broken condition 4 of the contract; that such a breach constituted repudiation by them of the contract, and that, therefore, it was no longer open to them to complain of any alleged breaches of the contract by the defendants.

The court, upon an examination of the whole of the circumstances attending the arrangements come to between the plaintiffs and the defendants, including the actual terms of the contract (as a whole), *i.e.*, not only those brought under specific consideration for the purposes of this suit, but also the other terms and conditions, held that condition 4 was an independent or separable condition; hence its breach did not go to the root of the contract, but was such that it could be adequately compensated for by a cash payment, whilst leaving the remainder of the contract subsisting, valid and capable of fulfilment; the breach, if any, by the plaintiffs of condition 4 did not entitle the defendants to indulge in breaches of the other conditions with impunity.

# ARBITRATION BILL.

A Bill to amend the law relating to arbitrations and to make provision for other matters connected therewith.

ARBITRATION AGREEMENT NOT TO BE DISCHARGED BY DEATH OF PARTY THERETO.

1.—(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

PROVISIONS IN CASE OF BANKRUPTCY.

2.—(1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has been adjudged bankrupt had before the commencement of the bankruptcy become a party to an arbitration agreement and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which sub-section (1) of this section does not apply, any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and that Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

POWER OF COURT WHERE ARBITRATOR IS REMOVED OR APPOINTMENT OF ARBITRATOR IS REVOKED.

3.—(1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the appointment of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

(*a*) appoint a person to act as sole arbitrator in place of the person or persons removed; or

(*b*) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise), that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this section or under any other enactment) that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

PROVISIONS ON THE APPOINTMENT OF THREE ARBITRATORS.

4.—(1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in the foregoing sub-section, the award of any two of the arbitrators shall be binding.

PROVISIONS RELATING TO UMPIRES.

5.—(1) The following paragraph shall be substituted for paragraph (*b*) of the First Schedule to the principal Act (which sets out certain provisions which are to be implied in an arbitration agreement unless the contrary intention is expressed therein):—

"(*b*) if the reference is to two arbitrators, the two arbitrators shall appoint an umpire immediately after they are themselves appointed," and in paragraph (*c*) of section five of the principal Act after the word "arbitrator" there shall be inserted the words "or where two arbitrators are required to appoint an umpire."

(2) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter on the reference in lieu of the arbitrators and as if he were a sole arbitrator.

(3) At any time after an umpire has entered on a reference in lieu of the arbitrators, whether under the provisions of this section or otherwise, any of the arbitrators may give evidence or act as an advocate on behalf of any party to the reference.

ARBITRATORS AND UMPIRES TO USE DUE DISPATCH.

6.—(1) The Court may, on the application of any party to an arbitration agreement, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(2) An arbitrator or umpire who is removed by the Court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to the provisions of sub-section (2) of section ten of the principal Act and to anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section the expression "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

AMENDMENT OF SCHEDULE I OF PRINCIPAL ACT.

7.—The following provisions shall be added at the end of the First Schedule to the principal Act:—

"(*j*) the arbitrators or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land:

"(*k*) the arbitrators or umpire may, if they think fit, make an interim award."

ADDITIONAL POWERS OF COURT.

8.—(1) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the First Schedule to this Act as it has for the purpose of and in relation to an action or matter in the Court:

Provided that nothing in the foregoing provision shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

(2) Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

(3) Where an application is made to set aside an award the Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.

STATEMENT OF CASE BY ARBITRATOR OR UMPIRE.

9.—(1) An arbitrator or umpire may, and shall if so directed by the Court, state:—

(*a*) any question of law arising in the course of the reference; or

(*b*) an award (including an interim award) or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court within the meaning of section twenty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the Court), but no appeal shall lie from the decision of the Court on any case stated under paragraph (*a*) of sub-section (1) of this section without the leave of the Court or of the Court of Appeal.

ENTRY OF JUDGMENT IN TERMS OF AWARD.

10.—Where leave is given under section twelve of the principal Act to enforce an award in the same manner as a judgment or order, judgment may be entered in terms of the award.

INTEREST ON AWARDS.

11.—A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

PROVISION AS TO COSTS.

12.—(1) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void; and the principal Act shall in the case of an arbitration agreement containing any such provision have effect as if that provision were not contained therein.

(2) If no provision is made by an award with respect to the costs of the reference any party to the reference may within fourteen days of the publication of the award or such further time as a Court or a judge may direct apply to the arbitrator for an order directing by and to whom such costs shall be paid, and thereupon the arbitrator shall after hearing any party who may desire to be heard amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

TAXATION OF ARBITRATOR'S OR UMPIRE'S FEES.

13.—(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into Court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

POWER OF COURT TO GIVE RELIEF.

14.—(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial for leave to revoke the submission or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator by reason of his relation towards any other party to the agreement or of his connection with the subject referred might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke any submission made thereunder.

(3) In any case where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke a submission, the Court may refuse to stay any action brought in breach of the agreement.

15.—Section eleven of the principal Act (which empowers the Court to remove an arbitrator and set aside an award) shall be amended by the insertion of the words "or the proceedings" after the words "has misconducted himself" in both places where those words occur in the said section.

LIMITATION OF TIME FOR COMMENCING ARBITRATION PROCEEDINGS.

16.—(1) The statutes of limitation shall apply to arbitrations as they apply to proceedings in the Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue

in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of the statutes of limitation both as originally enacted and as applying to arbitrations, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) In sub-section (3) of section four hundred and ninety-six of the Merchant Shipping Act, 1894 (which requires a sum deposited with a wharfinger by an owner of goods to be repaid unless legal proceedings are instituted by the shipowner), the expression "legal proceedings" shall be deemed to include arbitration.

(4) For the purpose of the statutes of limitation as applying to arbitrations and of the said section four hundred and ninety-six of the Merchant Shipping Act, 1894, as amended by this section, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(5) Any such notice as is mentioned in sub-section (4) of this section may be served either :—

(*a*) by delivering it to the person on whom it is to be served ; or

(*b*) by leaving it at the usual or last known place of abode in England of that person ; or

(*c*) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in England ;

and where a notice is sent by post in manner prescribed by paragraph (*c*) service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(6) Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applied shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period as it thinks proper.

(7) For the purposes of this section the expression "the statutes of limitation" includes any enactment limiting the time within which any particular proceeding may be commenced.

17.—Section sixty-nine of the Solicitors Act, 1932 (which empowers a Court before which any proceeding is being heard or is pending to charge property recovered or preserved in the proceeding with the payment of solicitors' costs), shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly.

AMENDMENT OF SECT. 16 OF AGRICULTURAL HOLDINGS ACT, 1923.

18.—The following sub-section shall be inserted after sub-section (5) of section sixteen of the Agricultural Holdings Act, 1923 :—

"(5A) Sections one hundred and ten, one hundred and eleven and one hundred and twelve of the County Courts Act, 1888 (which provide for the issue of summonses to witnesses in County Court actions and the enforcement of such summonses and the bringing up of prisoners to give evidence in such actions) shall apply to any arbitration under this Act as if that arbitration was an action or matter in the County Court.

"(5B) The High Court may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before any arbitrator appointed under this Act, if the prisoner is confined in any prison under process in any civil action or matter."

SAVING FOR PENDING ARBITRATIONS.

19.—Subject as hereinafter provided, the provisions of this Act shall not affect any arbitration which has been commenced within the meaning of section sixteen of this Act before the date on which this Act comes into operation, but shall apply to any arbitration so commenced after the said date under an arbitration agreement made before the said date :

Provided that nothing in this section shall affect the operation of the provisions of this Act amending the Agricultural Holdings Act, 1923.

CITATION, INTERPRETATION, APPLICATION, REPEAL AND COMMENCEMENT.

20.—(1) This Act may be cited as the Arbitration Act, 1934.

(2) In this Act, unless the context otherwise requires :—

The expression "the principal Act" means the Arbitration Act, 1889 :

The expression "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

(3) This Act shall be construed as one with the principal Act, and the principal Act, the Arbitration Clauses (Protocol) Act, 1924, and the Arbitration (Foreign Awards) Act, 1930, and this Act may be cited together as the Arbitration Acts, 1889 to 1934.

(4) This Act shall not apply to Scotland or Northern Ireland.

(5) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(6) The Act shall come into operation on the first day of January, nineteen hundred and thirty-five.

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## FIRST SCHEDULE.

### Matters in respect of which the Court may make Orders.

(1) Security for costs :

(2) Discovery of documents and interrogatories :

(3) The giving of evidence by affidavit :

(4) Examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction :

(5) The preservation, interim custody or sale of any goods which are the subject matter of the reference :

(6) Securing the amount in dispute in the reference :

(7) The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples

to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence :

(8) Interim injunctions or the appointment of a receiver.

SECOND SCHEDULE.

**Enactments Repealed.**

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 52 & 53 Vict., c. 49. | The Arbitration Act, 1889. | Paragraph (*b*) of section seven ; section nineteen ; paragraphs (*c*) and (*e*) of the First Schedule, and in paragraph (*d*) of that schedule the words "have allowed their time or extended time to expire without making an award or." |
| 10 & 11 Geo. V, c. 81. | The Administration of Justice Act, 1920. | Section sixteen. |

## QUESTIONS IN PARLIAMENT.

### Builders' Profits (Income Tax).

Mr. MITCHESON asked the Chancellor of the Exchequer if his attention has been drawn to the hindrance to house building due to the assessment to income tax of unrealised profits in those cases where the builder guarantees the repayment of a portion of the advance by building societies to purchasers ; and whether he will take steps to remove this menace to house building ?

Mr. CHAMBERLAIN : The computation of the profits of builders for income tax purposes is made on precisely the same principles as apply to other traders, and I see no justification for the proposed departure from these principles in favour of a particular trade. It is, however, recognised that there may be cases in which, as a result of the system of guarantees to building societies, the builder's available funds are insufficient to enable payment to be made at the due date of the full amount of the income tax charged. Arrangements to meet such cases have been made by the Commissioners of Inland Revenue after consultation with the National Federation of House Builders. I am sending my hon. Friend a copy of the arrangement.

### Income Tax.

Mr. COCKS asked the Chancellor of the Exchequer whether, in view of the fact that the Committee on the Simplification of Income Tax Law, which was appointed in October, 1927, has not yet presented its report, he will take steps to expedite its proceedings ?

Mr. CHAMBERLAIN : I would refer the hon. Member to the answer given on the 27th November, 1933, to the hon. and gallant Member for North-East Bethnal Green (Major Nathan) when it was stated that the Committee hoped to complete its labours in the course of the present year.

## Correspondence.

### POST-QUALIFICATION HONOURS.

To the Editors, *Incorporated Accountants' Journal.*

SIRS, — May I ventilate in your columns an idea which has been in my mind for some time. I am encouraged to do so by the fact that a similar idea seems to be in the mind of Mr. R. A. Witty.

It is possible in the Universities to take an Honours degree at the ordinary examination ; I believe it is also possible to take a Pass Degree, to specialise in certain directions, and afterwards proceed to an Honours Degree. In our examinations Honours are given on the ordinary examination only, and my suggestion is that the Council should consider a provision whereby a candidate could continue his studies after becoming an Associate, possibly specialising, and add "Honours" to his certificate at a later date. It may be that there would not be very many applicants for this honour, but it would do something to encourage "post-graduate" studies. Such further test might be—or include—the preparation of a "thesis" on some subject of professional interest (possibly on more than one subject), and in the preparation of this thesis the candidate would have the use of text-books and other sources of information open to him. It could be made a medium for the testing of practical experience, wider reading and thinking than is possible in the ordinary examination, and might *not* provide a suitable field for the extension of the "cramming" habit. It might be that capacity to communicate professional knowledge would be taken into account, *e.g.* by the submission to the examiners of lectures read before students' societies in which the capacity to state the knowledge acquired in a clear and orderly fashion (no mean professional virtue) would be shown. Suitable subjects for such exercises spring at once to the mind, *e.g.* a reconsideration of company law and practice in the light of recent cases ; a study of the present position in regard to the taxation of casual profits ; or a discussion of the problems arising on the consolidation of the balance sheets of groups of companies.

Such an innovation (not very revolutionary) might result in the creation of a new standard at which professional education would aim in the years to come.

Yours faithfully,

"A.S.A.A."

London, *February 6th*, 1934.

### OBSOLESCENCE CLAIM.

To the Editors, *Incorporated Accountants' Journal.*

SIRS,—I have recently argued against what appears to me to be an unreasonable interpretation of the Income Tax Act, 1918, Schedule D, Cases I and II, Rule 7, with an Inspector of Taxes, and the Chief Inspector of Taxes has upheld his junior's contention. As I think the point is a novel one and inconsistent with normal practice, I should be grateful if you would publish this letter.

A certain professional client of mine replaced his old car during 1932-33, and I proceeded in the usual way to claim obsolescence, viz, the difference between the written-down value for wear and tear purposes of the old car and the amount allowed for it by the vendors of the new car. For the first time in my experience the Inspector of Taxes wanted to know *whether the replacement was acquired on hire purchase terms and if so whether the capital sum paid in the client's accounting period was less than the allowance given.* I have vigorously contended that this point is, in my view, quite irrelevant, and that, in any case, this

treatment merely spreads the allowance over two tax years instead of concentrating it in one. The startling feature appears to me to be the new interpretation of the words "expenses" and "expended" in the Rule. Since when have they been taken to mean cash payments only?

Yours faithfully,

H. C. BANTING.

London, *February*, 1934.

## DISCHARGE OF A RECEIVING ORDER.

### Deed of Assignment Upheld.

Mr. Justice Clauson and Mr. Justice Luxmoore, sitting as a Bankruptcy Divisional Court in the Chancery Division, heard an appeal against a receiving order which was made by the Registrar of the Leeds County Court in the case of a debtor named Mr. William Watkins Wright on January 3rd last.

The appellant was Mr. Thomas Alfred Stoker, of Albion Street, Leeds, trustee under a deed of assignment executed by the debtor on October 3rd, 1933, and assented to by the majority of creditors, both in number and value, including the petitioning creditor.

Mr. Maddocks, for the trustee, stated that the grounds for the appeal were that the petitioning creditor assented to the deed of assignment and that he acquiesced in it and recognised the trustee's title thereunder. On October 13th last there was a creditors' meeting at which the petitioning creditor was represented by Mr. Fletcher, a clerk in an accountant's office, who took the chair. It was then stated that Mrs. Wright, the wife of the debtor, who had a claim against her husband for £290, had definitely agreed to postpone her claim until the trade creditors had been paid. On that understanding the meeting resolved to confirm the deed. Since then Mrs. Wright, who signed the deed of assignment, had refused to withdraw her claim, and a petition in bankruptcy was presented against her husband. Before the Registrar Mrs. Wright denied that she ever promised to withdraw her claim, but in cross-examination all she would say was "I don't remember." The evidence was tendered of two gentlemen to whom she was alleged to have made the promise, but the Registrar said there was no point in calling the evidence because, whether there had been a promise or not, the fact remained that since the creditors' meeting she had not withdrawn her claim. He thereupon held that the petitioner was not an assenting creditor to the deed, and made a receiving order. The case for the trustee was that the petitioner was an assenting creditor, but he relied chiefly on the fact that since the date of the deed the petitioner had served on the committee of inspection, had traded with the trustee as trustee and rendered him accounts and invoices for payment.

Mr. Tindale Davis, for the petitioning creditor, submitted that he was not bound by the deed as the condition precedent had not been fulfilled.

Mr. Justice Clauson, giving the judgment of the Court, held that Mrs. Wright, in signing the deed, effectively postponed her claim, and that the Registrar was wrong in thinking that she had not done so in the absence of some other formal document by her. The condition precedent had been fulfilled. The receiving order made by the Registrar must be discharged, the bankruptcy petition would be dismissed with costs, and the petitioner would have to pay the costs of this appeal. As the debtor was not now before the Court he would have liberty to apply formally to discharge the receiving order.

Mr. Tindale Davis asked for leave to appeal to the Court of Appeal, which was refused.

## Some Income Tax Questions.

A LECTURE delivered before the Incorporated Accountants' London and District Society by

### Mr. RAYMOND W. NEEDHAM, K.C.

The chair was occupied by Mr. JOSEPH STEPHENSON, O.B.E., F.S.A.A.

Mr. NEEDHAM said that, strange as it might seem, he was thinking about the income tax the other day, and it occurred to him what enormous changes had happened in the law and practice of taxation during, say, the last ten years. He understood that it had always been a little difficult for the taxpayer to battle with the Crown, but that difficulty, it seemed to him, had been increasing throughout that period and was still increasing and was likely to go on increasing, and he wondered where the taxpayer would be in the struggle ten years hence. That that should be so was not surprising when they compared the two combatants. There was the poor individual taxpayer on the one hand, and on the other hand there were Inspectors of Taxes, Assessors and Collectors of Taxes all over the country. The Inspectors were all highly trained in their job, men with single minds directed to one subject. All those inspectors were co-ordinated in the Chief Inspector's office at Somerset House with super-inspectors there. Over them were the Commissioners of Inland Revenue, with their own secretariat and legal department, all rightly alert to do the taxpayer's pet theories down. Nor was that all, because, in addition to all that, they had at the back of them the Law Officers of the Crown helped by junior counsel, who devoted their lives to this baffling subject. It was really remarkable that the taxpayer ever scored at all in that unequal struggle. But he did score from time to time, and he (Mr. Needham) apprehended that he scored in these days largely owing to the assistance he received from professional accountants up and down the country. They were the bodyguard of the taxpayer in these days, and it was to them that the taxpayer must look for the sort of help which was necessary to him in his contest—usually an amiable contest—with the Crown. Incidentally, they were equally necessary to the Crown in the normal administration of the tax.

#### CASUAL PROFITS.

Pondering in a general sense over what had taken place in the last period of years, the one thing that seemed to stand out most was the changed attitude to *casual profits*. They would remember that as recently as 1920 a Royal Commission on Income Tax made its report, and that Royal Commission was attended by all sorts of witnesses, including official witnesses from the Board of Inland Revenue. One of the great complaints of those Inland Revenue witnesses was that what were called casual profits escaped taxation. Indeed, the Inland Revenue witnesses made out such a moving case before the Commission that they recommended that those things which were considered to be free of tax at that time should be brought into liability by means of legislation.

Speaking from memory, Mr. Needham said that one of the Inland Revenue witnesses appeared and said that casual underwriting profit was not a thing which, as the law stood, could be taxed, and he added that that was the view held by the Inland Revenue at that time. It was a view that was accepted by the Royal Commission. Nothing happened, however, until the Revenue Judge (at that time Mr. Justice Rowlatt) had to try the case of *Ryall* v. *Hoare*,

and then the learned Judge proceeded not only to decide the case but to make history.

The facts of that case were simple enough. Two directors of a company guaranteed their company's overdraft at the bank, and in return they were paid a small sum by the company. Naturally enough they thought that that was a casual profit not liable to tax, but the Inspector of Taxes took the contrary view and they were assessed in respect of that profit. The case was an interesting one in many ways. It was interesting to the learned Judge, who had always been intrigued by the question of casual profits and had wondered what casual profits were. That that was so was apparent from many cases which had been argued before him and from dicta which he had let fall in those cases. When he found this case ready to hand, it seemed to him to raise the whole question of casual profits which he was anxious to explore.

Now at that time a statesman was writing a book. It was known to everybody that this celebrity was writing a book, because the papers had said lots of things about it, and it had also been freely stated that he was to receive a large sum of money for his work. So the Judge began to wonder what was to happen about that—whether the eminent man should return this as income or not, and whether it would or would not be liable. That was one of the things which his Lordship considered. Looking at the authorities which were referred to in the case, he came across the case of *Wyllie* v. *Eccott*. That case, in a sense, was somewhat remote from the subject. It was a case in which a person had let his house furnished and made a profit in so doing, and he desired to subtract from the profit the cost to him of living elsewhere. That was the sole issue. The Court decided that that deduction could not be allowed. The point that the casual letting of a furnished house was not liable to income tax at all was never argued. The only dispute was as to the amount of the liability.

Mr. Justice Rowlatt, however, took the view that *Wyllie* v. *Eccott* meant that the profits on letting furnished houses were by common consent accepted as annual profits liable to tax; in fact, in the course of his judgment he described the practice of assessing the profits of furnished houses as inveterate. One could hardly, however, have an inveterate practice for assessments made by all sorts of bodies of Commissioners up and down the country who might well take different views as to the liability of such profits. Personally, he (Mr. Needham) was of opinion that there did exist bodies of Commissioners who took the view that casual lettings of furnished houses did not give rise to taxable profit. However that might be, the learned Judge argued that if that sort of profit was liable to tax, why was not this, that and the other thing liable? In the course of the argument all sorts of illustrations were suggested by counsel or by the Judge himself. One odd illustration was something like this: You go to the City to have a chat with your stockbroker, and you see in a picture shop a painting which attracts you. It then occurs to you that your stockbroker is a judge of paintings as well as of stocks and shares, and you ask him to leave his office for a few minutes and advise you whether the picture is worth buying. You buy the picture and give something to the stockbroker for his trouble. It was suggested that that would be remuneration for services and ought to be taxed. This probably states the doctrine at its height.

It was right, however, to point out that the doctrine as indicated in *Ryall* v. *Hoare* might be too wide, for there was a strange case called *Martin* v. *Lowry* which went to the House of Lords, in which *Ryall* v. *Hoare* came up for consideration. Mr. Martin was an agricultural machinery factor, and strolling through Shepherds Bush one day during the period when surplus war stocks were being offered for sale, he was told that there were 40,000,000 yards of linen there. The idea rather tickled him. He knew nothing about linen, but the idea of buying 40,000,000 yards stimulated him. He inquired what was the price, and probably offered half of that, but he bought the linen. It subsequently turned out that what he really had at the back of his mind was that with 40,000,000 yards of linen in his hands, he could terrify the Belfast linen people and they would have to take his contract over once they saw he was in the market and a menace to their trade. Then, to his dismay, he found that the Ulster linen people, instead of rushing to take the bargain off his hands, kept aloof. Mr. Martin in that dilemma consulted some advertising experts, who advised him to start an advertising campaign in the press with the avowed object of selling these 40,000,000 yards retail. He then set up an organisation and proceeded to sell the linen. After some thousands of yards had been sold to the public who thought they were getting it cheap, the Belfast people came in and took the whole of it off his hands at a profit to Mr. Martin of some astronomical figure. Now, when Mr. Martin was buying the linen he said to the man at the Disposals Board, "What about income tax?" He was assured that there could be no such liability for the profit would be a casual profit and it was well known that casual profits were not liable to tax. So Mr. Martin accepted that assurance and for some years he lived as rich men do. Then one wet morning he received notices of assessment, again in astronomical figures, for income tax, supertax and excess profits duty.

It was not necessary, the Lecturer said, to pursue that story further, but in the course of the argument Mr. Martin contended that the profit was a casual profit. The Crown said, "No, it is the profit of a trade. You have been carrying on a trade." They argued that before the Special Commissioners, and they succeeded. Mr. Martin then tried to persuade the Courts to say that there was no evidence upon which the Commissioners could come to that conclusion. In the course of the argument in the House of Lords Lord Dunedin and one or two of their lordships said they must not be taken to agree to all the examples of liability which had been adduced in *Ryall* v. *Hoare*, though they approved that decision on its own facts. That was really how the question of casual profits stood to-day. It was difficult to do anything without becoming liable to tax.

### RESIDENCE.

Dealing next with the question of residence, Mr. Needham said that in the good old days it was thought that by clearing out of this country for six months in every fiscal year a man could get himself within that particular rule which granted exemption to persons who were outside this country for more than six months in the fiscal year. Of course, if that was a true reading of the rule, it was a heaven-sent piece of legislation for the "idle rich." The idle rich could stay in this country for Wimbledon and Ascot and finish up at Goodwood. Then they could hop over to France, stay there for six months and a day, and enjoy immunity from taxation in this country. It became a very flourishing industry.

To-day that sounded a little fantastic, but it was not very long ago that that practice was acquiesced in by the Inland Revenue. It was only in the 'twenties that the practice was seriously challenged, and then one had a crop of cases in which the six months rule came under analysis. Of course, it was perfectly plain to anyone really looking at the rule that it did not mean that anyone

who was really based in this country could hop out of the country and escape liability by staying six months and a day. The rule was not made for that purpose at all but merely for the protection of Frenchmen or other foreigners and non-residents who came over to this country for a holiday or on business. The rule was directed to a person who had no base in this country but who had a base in some other country.

### "MONEY'S WORTH" DOCTRINE.

Mr. Needham then proceeded to deal with what was called the "Money's worth" doctrine, which prevailed for a long time. That doctrine, he said, really arose in the case of *Tennant* v. *Smith*, the case of a bank manager who lived in a house adjoining the bank premises and had a salary of £300 a year, or something of that sort, and claimed abatement. It was in the days when "exemption and abatements" were allowed to taxpayers. In his form of return the bank manager set out his income, £300, and his private income as well, and let it go at that, making an appropriate claim on that basis. The Inspector of Taxes said, "No, that is not enough. You have the advantage of living in this house rent free; therefore you must bring the annual value of the house into your return of income." The bank manager did not take that view and there was a contest, which started in Scotland and went up to the House of Lords. The House of Lords held that the bank manager was right, that this annual value of the rent-free premises which he occupied ought not to go into his return of total income. But in that case some of their Lordships made observations which led other people, after reading the speeches, to believe that the real test in all cases was whether the occupier could let the house or whether he could not.

In the case of *Sutherland*, the Scottish Free Church minister could not let his house and he was held for that reason not to be liable to bring the annual value of the house into his income tax return. In *Corke* v. *Fry* the decision was to the contrary, because the occupier there (a minister of the Established Church in Scotland) could let the property and therefore turn its annual value into money. Those decisions purported to be based on what was said in the House of Lords in the case of *Tennant* v. *Smith*, and the doctrine continued to be so interpreted until a year or two ago. The change was produced by the case of *Commissioners of Inland Revenue* v. *Shanks*, in which the Court of Appeal ascertained and applied the true meaning of the judgment in *Tennant* v. *Smith*. What their Lordships said in that case was this: When you are considering Schedule A you have to find who is truly the occupier. If you find that X is the occupier, then he is the person who is assessed to income tax under Schedule A. He it is who pays the Schedule A tax; if he pays no rent he remains burdened with the tax. In other words, he has the beneficial enjoyment of the property and therefore the annual value of the property is his income.

It was quite true that in the *Tennant* v. *Smith* case the bank manager was there, but the bank was the true occupier of the property and the manager did not essentially differ from a caretaker. This view of the matter was again made plain, this time by the House of Lords itself, in the case of *Commissioners of Inland Revenue* v. *Miller*.

### "NO INCOME—NO TAX" DOCTRINE.

Passing into a different country, some of his hearers might remember the more or less recent case of *Whelan* v. *Henning*—an interesting case. The facts were these. Captain Henning, a retired Army man, resided over here and his income came from shares which he held in tea companies in Ceylon. He had been in the habit of receiving liberal dividends from those shares and also of paying tax on the basis of the three years average on those dividends. Then came the slump in the tea trade, and for one whole fiscal year Captain Henning received no dividend at all. He was, however, assessed for that year on the basis of the three previous years, and Captain Henning, knowing nothing about income tax, considered that that was a little remarkable. He brought an original mind to bear on the problem and said, "It is an odd thing that a person, having no income, should have to pay income tax," and he was so impressed with the fundamental soundness of that idea that he consulted counsel, who agreed with him and put his case before the Commissioners.

The General Commissioners accepted this view and quashed the assessment. They said, "'No income, no tax' must be a good and proper doctrine." The Inspector of Taxes did not like that, and appealed to the High Court. That was a leisurely process and when the case came before the High Court Captain Henning was a still poorer man, because another year had rolled by and no dividends had come from the tea companies. He therefore thought he would conduct his own case and save counsel's fees. The case for the Crown was put by the Law Officers, and then Captain Henning got up to state his case. He did not find it easy. He felt very much as he (Mr. Needham) felt that evening, in strange surroundings. Try as he would, Captain Henning could not do himself justice. The learned Judge was as much disturbed as the gallant officer. Eventually Captain Henning got out the slogan, "No income, no tax." The idea appealed to the learned Judge, who developed it and eventually gave judgment in Captain Henning's favour.

The case then went in a leisurely manner to the Court of Appeal, and, in the meantime, fortune had begun again to smile on Captain Henning. His dividends were coming in once more and he appeared by Counsel this time. Counsel saw the strength of the slogan, "No income, no tax," and wisely refrained from going too far into the technicalities of the Income Tax Act. In the result the Court of Appeal said Captain Henning was right.

The Crown then, he supposed, debated whether the performance should be reproduced in the House of Lords, but decided that it would be safer to go to the House of Commons first. Accordingly, legislation was subsequently passed which said that although a particular source might not produce income in a particular year, if the source existed the owner of the source must pay tax notwithstanding.

### SETTLEMENTS.

Another innovation had been made which very seriously cramped the taxpayer's methods—he referred to sect. 20 of the Finance Act, 1922. That section, put baldly, said that if one alienated one's income to another person, in certain circumstances, it was still one's own income and not that of the person to whom it had been alienated. That was a brutal doctrine, but there it stood, and it meant a complete reorganisation of the lives of many people who, by means of settlements, had previously reduced their super-tax liability to comfortable dimensions. "So the situation now is rather curious," Mr. Needham said. "If I alienate my income to Mr. A and I do not pay it to Mr. A but use it for myself, then Mr. A can put me into prison for embezzlement; meanwhile, if I do not pay tax on that income the Inland Revenue can put me into prison, too."

### SUR-TAX ON COMPANIES.

The next section (sect. 21) said that in certain circumstances the income of a company was liable to sur-tax. This section destroyed a time-honoured conception and deprived companies of a good deal of their pristine charm. Reserves could no longer be piled up with impunity. The section struck a rude blow at the practice of selling assets and businesses to companies with a view to the avoidance of super tax. It brought other disabilities in its train, and took the gilt off the practice of issuing bonus shares and bonus debentures; for although such things were still not liable to sur-tax in the hands of the shareholders, their issue often involved the company in liability to sur-tax under sect. 21.

### RESIDUE OF TRUST ESTATES.

He would bring his remarks to a close by a brief reference to the change which was now taking place in regard to the sur-tax repercussions of the doctrine relating to the residue of a deceased person. The rule was that until an estate was definitely wound up, all the liabilities paid off, &c., what the beneficiary got from the trustees in the meanwhile, although it was income, was not the beneficiary's income; it remained throughout the period of the distribution the income of the trustees and what the beneficiary got was really an advance of money to which he was entitled. The effect of the doctrine was that the beneficiary was not liable to super tax during the period in question. This doctrine was laid down years ago and it came to be thought that so long as the administration went on, the beneficiaries would, as of course, avoid all liability to super tax. A series of cases reached their climax in the case of *Commissioners of Inland Revenue* v. *Wahl*. That case came before the House of Lords, and it was a case of an extreme kind. Mr. Wahl's father had died and he (the son) was the sole beneficiary and the sole administrator. He administered the father's estate. The moneys came in and went into his own banking account and were spent. Then it occurred to some person that, inasmuch as the estate of Wahl deceased was not administered, these moneys were still the income of Wahl in his capacity as administrator and not in his capacity as beneficiary. That case reached the House of Lords and the Special Commissioners, having found as a fact that the estate was not administered, the House of Lords affirmed the finding as a finding of fact. But although they did so, they gave a broad hint to tribunals of first instance that a finding that an estate had been ascertained could now often be supported although certain matters remained outstanding. In the result, each case was now carefully scrutinised, and the view was readily taken, as a matter of substance, that the estate was fully administered. Thus this happy territory of super tax or sur-tax non-liability was rapidly contracting in the new light of a commonsense view of the facts. These cases were no longer a walk-over.

He (Mr. Needham) asked his audience to take all the examples he had given in a broad sense, for he was speaking entirely without notes.

Enough had been said to show that great changes had happened, that they were still happening, and that the lot of the taxpayer as a litigant was growing ever more difficult. That being so, the professional accountants had obviously a great future before him.

## Discussion.

The CHAIRMAN said he was sure they had all listened with very great interest to Mr. Needham. One thing that struck him at the outset, when Mr. Needham was talking about the poor, harassed taxpayer, was that the remedy was very simple. For a very moderate fee, as far as Incorporated Accountants were concerned, the taxpayer could have all the assistance he required. Mr. Needham might come on the scene later, but whether his fee would be quite so moderate was another matter. (Laughter.) When Mr. Needham was talking about casual profits, the point immediately struck one that the Inland Revenue's position was not always easy, and it was not so to-day, because immediately they began to deal with casual profits they had, of course, to deal with casual losses. The question of perquisites was interesting, but then Mr. Needham was talking more from the point of view of Schedule A tax on property. He thought the Lecturer would agree with him that there were many perquisites which could not be brought into taxation. For instance, a man might have the use of a motor car, and it would be very difficult to tax him for the benefits he got therefrom. The question of bonus shares was a very interesting and perhaps complicated one. He thought Mr. Needham must have meant when he said there was a possibility of the company paying sur-tax on bonus shares, that really the company must have made sufficient profit to enable sur-tax to arise; otherwise, of course, bonus shares could not be distributed. He had always found, in daily practice, that the Revenue Authorities were extremely fair in dealing with any cases where the question of sur-tax arose in connection with a company. They always looked to the financial or liquid position to see whether the company could actually do without that cash in the conduct of its business—at least, that had been his experience. The question of loans to directors or shareholders, as Mr. Needham had said, had more or less solved itself. There was the difficulty of the test being whether the shareholder or director might have to repay those loans in case of liquidation. He had always felt that that was a considerable difficulty that the Revenue Authorities had to get over, because if a man borrowed money from a company he was liable to repay it.

Mr. A. STUART ALLEN, F.S.A.A., said it would be easy to spend the few moments allotted to him in a eulogy of the address which they had heard that evening, but he thought everyone would agree with him that its merit was so conspicuous that if he were to do so he would be merely emphasising that which was obvious to them all. Whenever he heard an eminent authority speaking on the present complexities of the income tax and on the elaborate superstructure that had developed upon the original foundation, he was moved to reflect that the overburden which was so troublesome to all of them was largely the result of the efforts of that profession which their Lecturer so ably represented. Whether one would be justified in using the adjective "misdirected" with regard to those efforts was a matter which he preferred to leave someone else to decide. Mr. Needham had given a review of certain marked changes that occurred in the last decade, and it was rather amusing to go back still further to the time, about the year 1800, when income tax first became a problem in this country. At that time, if one studied the Acts, one realised that their main idea was that the taxpayer should really be assessed by what one might call a parochial administration. They had the local Commissioners appointing their assessors and their collectors. The assessor's job was to assess in the light of his knowledge of his neighbour's affairs. One could see that that might have led to difficulties in certain circumstances. For instance, the cobbler might have been the assessor—in fact, he very frequently was in outlying parishes. Another reflection that always struck him in connection with that old, simple method of assessment in the light of local knowledge—of really the taxpayer by his neighbour—was a paragraph in Dean Swift's "Gulliver's Travels." In Laputa, two professors were debating on the respective merits of two systems of taxation. The first was arguing for assessment of the taxpayer by the neighbour; the second was arguing for assessment of the taxpayer by himself. That second alternative had many attractions. If they would bear with him, he would read an extract from the book. It was suggested that in Laputa taxes should be imposed upon—

> "those qualities of body and mind for which men chiefly value themselves, the rate to be more or less

according to the degrees of excelling, the decision whereof should be left entirely to their own breast. The highest tax was upon men who are the greatest favourites of the other sex, and the assessments according to the number and nature of the favours they have received, for which they are allowed to be their own vouchers. But valour and politeness were likewise proposed to be largely taxed, and collected in the same manner by every person giving his own word for the quantities of what he possessed. But as to honour, justice, wisdom or learning, they should not be taxed at all, because they are qualifications of so singular a kind that no man will either allow them in his neighbours or value them in himself. The women were proposed to be taxed according to their beauty and skill in dressing, wherein they had the same privilege with the men, to be determined by their own judgment. But constancy, chastity, good sense and good nature were not rated, because they would not bear the charge of collecting."

There were one or two points which Mr. Needham had not touched on. One was the question of penalties. In practical experience of taxation cases, he supposed they all occasionally met people who had not done all that they should have done as regards their taxation returns. The accountant went into the facts of the case as far as they were discoverable, and in due course arrived at some measure of agreement with the Inspector of Taxes or the Enquiry Branch, that C.I.D. of the Inland Revenue. Then they began talking about penalties. They referred to the various sections, and one was left with a very vague idea as to the amount of such penalties. He himself felt that in an entirely simple case it should be quite easy to get guidance on the actual amount of penalties that could be exacted in any particular case. He had tried on various occasions, and so far he had failed most dismally. He would like to put a specific question on sect. 30 of the Income Tax Act, 1918. That read :—

> "A person who in making a claim or obtaining any allowance or deduction . . . is guilty of any fraud or contrivance or conceals or untruly declares any income shall forfeit the sum of £20 and treble the tax chargeable in respect of all the sources of his income."

Just imagine the case of a man who had omitted from his return—(assume there was no question of sur-tax liability)—£100 dividends on bearer bonds, thinking nobody knew he had got them. Later on, the Revenue discovered he had the bearer bonds, and the question arose of a fraudulent return. What were the penalties ? Was it true that he was liable to a penalty of £20 plus treble the tax on the whole of his income ? Was sect. 30 applicable at all, seeing that personal allowances and reliefs no longer depended upon total income ?

Mr. RICHARD A. WITTY, F.S.A.A., said that probably most of them saw in the paper on the previous evening a somewhat facetious reference to a Committee which had been sitting for some time engaged on the task of simplifying income tax law. The particular report which he saw had a headline which suggested that the first seven years' work of that Committee would probably be the hardest. He thought the lecture which they had heard that night illustrated very plainly the enormous difficulty of trying to simplify income tax law in practice. In all the matters with which Mr. Needham had dealt, the division between what was within the income tax law and outside of it was very fine indeed, and, as they probably knew, in many of those cases it finally resolved itself into a question of opinion between the judges in the final Court. He could not help wondering, too, if that special Committee under Lord Macmillan would take any sort of lesson from the experience of Captain Henning. It seemed to him that Henning did a wonderful piece of work towards the simplification of income tax. He enunciated and proved to the satisfaction of the judges a perfectly straightforward principle : "No income, no tax." And what was the result ? The whole of that simplification was immediately confounded by the imposition of new legislation. If that was to be the result of the efforts of the Committee to simplify the tax, one began to wonder why any such Committee had ever been appointed. He noticed, too, that it was Mr. Needham's opinion that the whole question of income tax was getting more difficult, and one could not help feeling that he spoke probably with wider experience than anybody in the room on that particular point. He (Mr. Witty) was afraid they would agree with him, although they might also agree with the cynical business man who suggested some time ago that up to the present every attempt to simplify income tax law only resulted in more work for lawyers and accountants. He thought it was Lord Sumner in a case a few years ago who suggested that in endeavouring to consider income tax Acts it was not very safe to apply the principle of justice or injustice, but one was forced to apply the principle of expediency or inexpediency. That probably explained a good deal of the trouble with regard to income tax law. He did not know if that principle was accepted by the lawyers, but he did know that in their income tax practice as accountants they had to use it very largely indeed. They had to consider what was expedient for their clients, rather perhaps than what might be just. They did that, of course, because of the difficulty of obtaining a final legal decision. They did it because of the variations in the decisions of different bodies of Commissioners throughout the country ; and perhaps they were wise in doing it when they remembered those great battalions of official and legal gentlemen to whom the Lecturer referred in the opening part of his paper as being engaged in combat against the single taxpayer. With regard to casual profits, that question arose under the heading of expediency or inexpediency. He had always found it difficult to understand why the Revenue Authorities took the attitude they did in regard to profits from occasional Stock Exchange transactions. They all knew the problem of trying to decide whether a client was engaged in a particular trade or not. The theory had been put forward that, on balance, if the Authorities attempted to tax Stock Exchange speculation profits the Revenue must itself suffer, because the losses in total were probably greater than the profits to the extent of the income of all the stock-brokers and stock-jobbers in the country. But it was difficult to believe that it was only for that reason that the Revenue Authorities sat down and did nothing. He would be glad if the Lecturer could tell them if there was anything behind that principle. He had two or three other notes, but they had been dealt with either by the Chairman or Mr. Allen, and it only remained for him to say how much he had enjoyed the lecture, because Mr. Needham had dealt in a simple way with some problems which puzzled them in their ordinary daily life.

Mr. H. E. COLESWORTHY, F.S.A.A., said that his contribution to this discussion would be very short. There was only one small point he would like to put to their Lecturer affecting casual profits, to which the previous speakers had referred. He felt there was a difficulty with the Inland Revenue Authorities in establishing the justice of looking at casual profits arising in the years before *Ryall* v. *Hoare*, in the light that one would have regarded them at the time they arose. He was speaking particularly of back duty settlements in which casual profits formed the bulk of the unassessed profits brought in. It was very hard to forget *Ryall* v. *Hoare* and *Martin* v. *Lowry*, and the other cases they knew so well now, and to put one's mind back to where they were before 1922, and look at the facts as they were then. It led him to feel that at some time or other, probably in a very short time, they would need something more certain than the present Hansard extract—something more definite than a reprint of an answer in Parliament. Its terms were well known, but almost every line could now be made to bear a different interpretation. He could not help feeling that they wanted something more certain, something drafted in more definite phrases, to do justice to a man who wished to make a full and frank disclosure, and to get justice in connection with what he regarded as untaxable income before those cases arose. He could not help feeling that it was not satisfactory that this tax which still had to be collected depended upon that extract from Hansard. If

they could get that in clearer terms, he thought they would be able to tell a man exactly where he stood.

Mr. RAYMOND NEEDHAM, replying to the discussion, said the Chairman had been very kind to him, because he had not asked any questions at all, and that was the most gentlemanly thing anyone could do. But Mr. Allen had put to him a problem which did not arise on the address, on the interpretation of sect. 30 of the Income Tax Act, 1918, in regard to penalties. The probability was that no one on earth knew exactly what it meant—and the taxpayer unhappily was hardly ever in a position to contest the point. Mr. Allen had offered some interesting observations on the archaic machinery of assessment. It reminded him of the story of one George Grossmith. George Grossmith, senior, died. Some years afterwards a letter was addressed to "George Grossmith, senr., care of George Grossmith, junr.," by the Inspector of Taxes. The letter turned out to contain a notice of assessment on George Grossmith, senr., to the tune of about £50,000, and George Grossmith, junr., wrote back to the Inspector who sent the notice, and said: "I do not know George Grossmith, senr.'s, present address, but at any rate you can take it from me that, wherever he may be, he is earning a great deal more than when I last met him." (Laughter.) Mr. Witty had spoken of the difficulty of simplifying the income tax, and if he (Mr. Needham) might say so, he thought his words were words of wisdom. When one thought of the income tax problems that arose, they were only very rarely problems relating to the drafting of the Acts; more often they related to such things as "What is a trading profit?" "What is capital?" and so on. Whatever alteration might be made in the language of the Acts, that could not be changed. Mr. Witty also raised a very interesting question with regard to the immunity from tax of the ordinary individual who buys and sells shares *ad lib.* He could do it a hundred times a year, and it was never suggested that he was carrying on the trade of buying and selling shares. Why was that so? Wherein did shares differ from other things that were bought and sold? Of course, almost everyone bought and sold stocks and shares; what A gained, B lost. Probably there was nothing in it from the Revenue point of view. The apparent apathy of the Crown was probably due to expediency. Generally, of course, it was as Mr. Witty had said: one could indulge in flutters on the Stock Exchange to one's heart's content or one's pocket's extent, and no income tax would be payable, but the moment one began to dabble in futures, whether cotton. rubber or whatever it was—one was immediately attacked, There was no strong reason for it in principle. As Lord Sumner said, taxation had nothing to do with fairness or unfairness; it was a matter of expediency. Mr. Colesworthy had raised the question of the White Paper and the liability of those delinquents who did not pay tax upon casual profits. It was perfectly true that a delinquent brought to justice after *Ryall* v. *Hoare* had a worse time than one who might have been brought to justice before that case. But he did not see how they were going to get away from that, because the law had to be administered as the law stood to-day, and although at the time that the speculations were made the speculator honestly believed that there was no liability, yet there was liability to-day. At the same time, when one was considering the liability to be attributed to years out of time for assessment, regard ought to be paid to the conception of the law prevailing at that time. That which could not be assessed was in a different position from the thing which could be assessed.

Votes of thanks to the Lecturer and Chairman, proposed by Mr. C. B. HEWITT and Mr. W. NORMAN BUBB respectively, terminated the proceedings.

## Changes and Removals.

Mr. I. Bartfield, Incorporated Accountant, and Mr. S. Bartfield, Chartered Accountant, practising as Bartfield & Co., 91, Cookridge Street, Leeds, announce that they have taken over the practice formerly carried on by Mr. J. Stamler, of 79, Albion Street, Leeds. The combined practices will be carried on at 91, Cookridge Street, Leeds, under the style of Bartfield & Co.

Mr. Ernest E. Bayfield, 73a, Queen Victoria Street, London, E.C.4, has taken into partnership his son, Mr. L. E. Bayfield. They will practise under the style of Ernest E. Bayfield & Son, Incorporated Accountants.

Mr. E. A. C. Cole, Incorporated Accountant, intimates that he has ceased to practise at 179, Wardour Street, London, W.1, but is continuing to practise at 148, Western Avenue, Acton, London, W.3.

Messrs. Duncan & Toplis, Incorporated Accountants, Nottingham and Grantham, announce that their Nottingham office has been removed to Park House, Friar Lane.

Messrs. Dunn, Hornby & Co., Royal Exchange Building, Nairobi, Kenya Colony, have taken into partnership Mr. Mervyn H. Cowie. The firm will in future practise under the name of Dunn, Hornby & Cowie, Incorporated Accountants.

Mr. Alfred Neill, Incorporated Accountant, intimates a change of address to Westminster Bank Chambers, 196 and 198, High Street, Stoke Newington, London, N.16.

Mr. Eric Portlock, F.C.A., Incorporated Accountant, announces that he has joined the firm of Singleton, Fabian & Co., Chartered Accountants, of 8, Staple Inn, and 3, Throgmorton Avenue, London, as a partner. The firm of Eric Portlock & Co., Bond Street House, Clifford Street, London, is being amalgamated with that of Singleton, Fabian & Co. at the Staple Inn address.

Mr. L. I. Prager, Incorporated Accountant, has commenced public practice at Faxfield House, 28, Watling Street, London, E.C.4.

Mr. C. W. Preston, of 50, Market Place, Hull, has admitted into partnership Mr. H. M. Preston and Mr. C. H. Tranmer. The firm will practise under the style of Preston, Son & Tranmer, Incorporated Accountants.

Messrs. T. L. Wilson & Co., Incorporated Accountants, announce a change of address to North House, North John Street, Liverpool 2.

Mr. F. B. Young, Incorporated Accountant, has commenced to practise at 35, West Sunniside, Sunderland.

# Society of Incorporated Accountants and Auditors.

## MEMBERSHIP.

The following promotions in, and additions to, the Membership of the Society have been completed since our February issue:—

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HOOLEY, HAROLD TOWLE, National Chambers, Goldsmith Street, Nottingham, Practising Accountant.

JOY, HAROLD FREDERICK, 28, St. Thomas Street, Weymouth, Practising Accountant.

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PARKIN, HARRY STANLEY, 33, West Sunniside, Sunderland, Practising Accountant.

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SHAH, RAMANLAL BHOGILAL, B.Com. (Sastri & Shah), Oriental Assurance Buildings, Armenian Street, Madras, Practising Accountant.

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STABLES, WILLIAM HENRY, 24, Finkle Street, Kendal, Practising Accountant.

STEWART, LAUD EDGAR (L. E. Stewart, Waters & Co.), 22, Marefair, Northampton, Practising Accountant.

THOSEBY, JAMES (Thoseby, Son & Co.), District Bank Chambers, Market Street, Bradford, Practising Accountant.

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WILSON, FREDERICK MAYNARD, Borough Treasurer's Department, Town Hall, Halifax.

## DISPUTED CLAIM FOR ACCOUNTANTS' CHARGES.

A King's Bench Divisional Court, composed of Lord Justices Scrutton and Maugham, heard an appeal by Messrs. Cole, Dickin & Hills, Chartered Accountants, of Essex Street, Strand, London, against a decision of the learned Recorder sitting at the City of London Court in an action brought against the defendants, Surfacing Limited, of Stevenage, for professional fees for audit and taxation work.

Messrs. Cole, Dickin & Hills claimed £70 11s. 3d. for accountancy work done for the defendants, a new company. The latter pleaded that Messrs. Cole, Dickin and Hills agreed to do the work for 15 guineas. The Recorder held there was no such agreement, but that Messrs. Cole, Dickin & Hills agreed to do the work for that sum provided it did not take more than three days. In addition the company alleged that if there was no specific agreement the charges were unreasonable, and the result was that the Recorder awarded Messrs. Cole, Dickin & Hills £29 8s. on the basis of seven days at four guineas per day. Messrs. Cole, Dickin & Hills said there was no evidence on which the Recorder could award four guineas a day and that the sum awarded was quite inadequate, as the work took about 240 hours to complete.

The result was, said Mr. N. A. Bridgeman (Counsel now appearing for the appellants), that as a sum of money was paid into Court, his clients had to pay the company £15 for "the pleasure" of doing their work.

Mr. Greer Jackson, for the company, contended that the finding of the Recorder, who heard the evidence and considered all the circumstances, was right.

Lord Justice Scrutton said he came to the conclusion that there was evidence on which the learned Recorder could arrive at his decision.

Lord Justice Maugham, however, disagreed. The appeal was dismissed, with costs.

## NEW RECORDER OF SANDWICH.

Mr. Albert Crew, whose literary work is well known to our readers, has been appointed Recorder of Sandwich in succession to Sir Gervais Rentoul, K.C., who has been appointed a Metropolitan Police Magistrate. Mr. Crew, who was called to the Bar in 1908, is a member both of Gray's Inn and Middle Temple.

# Responsibilities and Duties of Directors and Officers of a Newly Formed Company.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London and District by

**Mr. HERBERT W. JORDAN.**

The chair was occupied by Mr. W. D. MENZIES, Incorporated Accountant.

Mr. JORDAN said: I imagine there are few professional accountants who have not at some time been asked for advice by a client in connection with a projected transfer of his business to a company. Subsequently, no doubt, the client consulted his solicitor in respect of certain legal aspects, but it is to your profession he probably first looked for guidance. Interrogatories will inevitably have been concerned with, among other matters, the effect the change would mean to him as an individual, how it would affect his capacity to control the business and to deal with his interest therein and his personal obligations and desires, and the measure of his responsibility after the transfer of the business.

Perhaps a brief sketch of the procedure on the incorporation of a company will best serve to lead up to a consideration of the questions raised.

As private companies represent the bulk of the companies incorporated each year (during 1932 the public companies only numbered one-fortieth of the companies registered), we may regard the new company which we are using for our example as being a private company.

Let us adopt as a dummy for our purpose a client who carries on business as (say) a miller, and for the further purpose of illustration we will give him a wife and a family consisting of a son and a couple of daughters.

At an early stage you will explain to him that when the ownership of his business is transferred from him to the company which is formed for its acquisition, no longer will his personal liability be unlimited and his personal estate be liable to the furthest extent for the commitments of the business, but that his personal liability will be limited to any amount that may be unpaid on the shares which he holds. As the consideration for the transfer of the business to the company will usually be shares, which will be allotted to him or his nominees credited as fully paid, his liability (apart from any liability upon shares of which he subsequently becomes the holder) will be nil.

Although his liability ceases his ability to control the business need not be curtailed, as by suitable provision in the company's Articles there may be vested in him power to exercise all the authority to which he has been accustomed, and, further, power to appoint some person his successor, either during his life or, by will, after his decease.

### MEMORANDUM OF ASSOCIATION.

Considering, first, the Memorandum of Association, we may refer seriatim to the five clauses which it contains, touching very briefly upon clauses 1, 2 and 4, as presenting little subject for comment.

Clause 1 states the name, which normally will be the trading style of the existing business with the addition of the word "Limited." If the name cannot be adopted because there is already upon the Register of Companies a name with which it is identical or which, in the opinion of the Registrar it too closely resembles, it must be varied to make it acceptable by the Registrar. Preservation of the name is usually desirable and the Registrar's requirements can be satisfied in most cases by the addition of a Christian name or initials or of the town in which the business is carried on or of a word describing the business. Thus, Brown & Co., Limited, would almost inevitably be rejected, but would most likely be acceptable if altered to (say) Theodore Brown & Co., Limited, or T. F. Brown & Co., Limited, or Brown & Co. (Millers), Limited, or Brown & Co. (Cornville), Limited.

Clause 2 simply states that the registered office is situate in England or (if that be the case) Scotland. There are no alternatives, and for this purpose Wales cannot be specified, being part of England.

You realise, of course, that this clause does not have the effect of restricting the business activities of the company to the country in which the registered office is situated. But if a company incorporated in England carries on business out of the country it must observe the requirements of the local laws. Although English and Scottish companies are subject to the same Companies Act, Scotland has distinctive laws of her own which are given effect to in the Act.

Most thoughts are given to Clause 3. An individual carrying on business can buy and sell or deal in anything which he makes up his mind may be a profitable enterprise. But a company cannot make up its mind from time to time to vary the scope of its activities, and so Clause 3 is required to specify the objects for which the company is formed. The first object will be the taking over of the business which the company has been formed to acquire, and this will be followed by sub-clauses setting out businesses which may properly be carried on in connection with the business being acquired or which may be properly incidental thereto. Only business which this clause expressly authorises or which may be implied from the powers which are expressly taken may be carried on by the company, any activity outside that capacity being *ultra vires*. The importance of this clause will be readily appreciated and the statement of the company's intended activities should include everything cognate to the business being acquired, or which may reasonably be expected to develop out of the business as it grows. Nevertheless the clause should not prescribe every detail of the proposed business, for to do so might defeat the purpose intended, and the maxim *expressio unius est exclusio alterius* holds good.

There occurred years ago a case wherein the objects in the Memorandum were particularised most minutely, but the company had to seek authority of the Court to deal in a commodity which was mentioned in the name of the company but not in the Memorandum.

An important "object" which should be included in the Memorandum is power to borrow money for the purposes of the company's business. In the absence of express prohibition a trading company generally has implied power so to borrow; but it is nevertheless advisable to make the position beyond question by taking in the Memorandum express power.

Clause 4 merely states that the liability of the members is limited.

Clause 5 can follow the simple formula of the Act as found in the form prescribed in the Schedule, or it may include important provisions relative to the shares. The law only requires this clause to state the amount of the share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount. If the desire be that the capital of the company shall be divided into shares of different classes, as pre-

ference or ordinary, with preferential rights attached to the former class in respect of dividend and repayment of capital upon a winding-up, such rights may be specified in Clause 5 of the Memorandum or in the Articles. Alternatively, the Shares may be divided into classes by the Memorandum and the rights be specified in the Articles. The fact of importance to be remembered in this connection is that the Memorandum is unalterable (except in respect of increase of capital and in certain circumstances with the sanction of the Court), and if the shares are divided into classes by Clause 5 and particular rights attached thereto by that clause those rights cannot be subsequently varied unless there is some provision of the Articles, which, being read contemporaneously with Clause 5, supports such a variation.

If the owner of the business is influenced by very definite considerations, from which he will not depart, he may consider that statement in the Memorandum of class rights attaching to any shares will be desirable; but if he is not so definitely decided in mind and policy, the better procedure is to leave such details for inclusion in the Articles, especially if, as will most likely be the case, he will hold sufficient shares to enable him to dominate the voting and prevent any alteration of the Articles.

### THE COMPANY'S ARTICLES.

If, as will probably be the case, the company is to be a private company, it will, of course, be necessary for the Articles to restrict the right to transfer shares, to limit the number of members to fifty, and to prohibit invitation to the public to subscribe for shares or debentures of the company.

The Articles by which transfers are restricted do not have to follow any prescribed form, and any provision which operates in respect of all the shares of the company and gives the directors power to control transfers suffices. Articles are frequently adopted under which the transfer of shares to relatives within a specified degree of relationship is allowed; or a shareholder desiring to transfer his share is required first to offer shares to some particular person (as, for example, the vendor of the business to the company) or to the members generally. Where some definite objective lies at the back of elaborate transfer provisions, there is justification for their inclusion in the Articles; but it is advisable to look beyond the immediate purpose, for in different circumstances restrictions may operate against those who seek to impose them.

The restriction of the membership to fifty persons in the case of a private company does not affect the right of the company to have employee shareholders to any number, as persons in the employment of the company who hold and persons formerly in the employ of the company who during their employment held and have continued to hold shares in the company are not included.

### CAPITALISATION.

In the case of a private company neither shares nor debentures may be offered to the public for subscription. The question, who constitute the public? has been a matter which the Courts have had to consider on various occasions. But as private companies have not usually any desire to bring in the public, difficulty is little likely to arise. It may be remarked here that, although the offer of debentures to the public is forbidden, restriction is not placed on the transfer of debentures.

It will be your duty to advise your client in his deliberations upon the amount of nominal capital with which the company should be incorporated and reference should be made to balance sheets for a few years back to arrive at the precise amount of capital which may be regarded as invested in the business and the average profits earned. Assume the net value of the business, *i.e.* surplus of assets over liabilities, to be £10,000, and the net profits over a period of years, or anticipated profits—after deducting the owners' drawings by way of salary (which he will continue to take as director—to be £1,500. It may be convenient to fix the nominal share capital at an amount slightly above that actually indicated by the figures and in respect of which shares will be allotted to the vendor. The balance can remain unallotted, to be available for issue if and when further capital is required. A reasonable margin would be allowed by incorporating the company with a nominal capital of £12,000 and allotting 10,000 shares, credited as fully-paid, to the owner of the business or his nominees. In our assumed case the owner would probably nominate his wife and his son and daughters to receive an allotment of some of the shares. If the capital were divided into preference and ordinary shares, the owner might think it appropriate for his wife and daughters to have allotted to them the whole or part of the preference shares and for his son to have ordinary shares only. The son would probably be employed in his father's business and his receipts by way of dividend should have some relationship to the prosperity of the business and thus give him an incentive to work for its success.

Assuming that the nominal capital is fixed at £12,000, as suggested, capital duty would be payable thereon at the rate prescribed by this year's Finance Act which has reduced the duty on share capital of companies to the welcome figure of ten shillings on every £100. On the capital specified your client will pay capital duty £60, a fee stamp of £6 15s. on the Memorandum, and a deed stamp of ten shillings on the Memorandum and also upon the Articles, a fee stamp on the latter of five shillings and a like fee stamp upon each of the three forms required on incorporation, viz, notice of situation of registered office, particulars of directors, and declaration of compliance with the requirements of the Companies Act. These will total £68 15s.

Instead of the amount suggested being adopted as the nominal capital, a smaller amount might be decided upon and debentures be issued for an amount equal to the difference and the consideration for the sale of the business would then be discharged partly in shares and partly in debentures.

An effect of this would, of course, be that the vendor would become a creditor of the company in respect of such debentures, and in the event of his decease his widow would be in a more secure position as debenture holder than she would be even as a preference shareholder.

A few years since short-term notes were in favour. These usually entitled the holder to interest at a high rate, but they were generally issued for a short period of time and not secured by a charge.

By issuing to the vendor debentures as part of the consideration for the transfer of the business to the company some economy would be effected, as in respect of the amount represented by debentures mortgage duty at 2s. 6d. per cent. would be payable on the registration of the debentures instead of capital duty at 10s. per cent. The economy is not, however, of so much importance as formerly, when the *ad valorem* capital duty was at the rate of £1 per £100.

Usually an agreement for the sale of the business will be necessary, and this will be executed after the incorporation of the company. The document will be stamped with 10s. or sixpence, according to whether it is executed

under seal or hand, and *ad valorem* duty at the rate of 20s. per £100 on the amount of the consideration, less the proportion attributable to certain assets in respect of which exception is made by sect. 59, sub-sect. 1 of the Stamp Act, 1891.

DIRECTORS.

The question has been asked whether the exercise of the power of appointing a successor is such an assignment of office as the Companies Act prohibits, except with the approval of a special resolution. It does not seem that the question can properly arise where the appointment is made by will, but if such an appointment is made during life it would be advisable to obtain the approval of a special resolution. Such a director is frequently styled the "Governing Director," but there is no inherent quality in the word "Governing," and he can have all the powers indicated without being given any particular description. If the idea were to commend itself, an Americanism might be adopted and the director be called the president. Similarly with any persons whom he may appoint, the description by which they are known is not of great significance, because by the Companies Act the word "director" includes any person occupying the position of director, by whatever name called. The Act further provides in respect of certain obligations imposed thereby that "a person in accordance with whose directions or instructions directors of a company are accustomed to act shall be deemed to be a director and officer of the company," and there are in the Act verbal variants of this latter provision.

The Act does not furnish, nor has any previous Companies Act furnished, a definition of the word "director," or expressed in concrete terms the duties and responsibilities of a director. This restraint on the part of the draftsmen indicates a wise discretion, for the formulation of a satisfactory definition presents difficulties.

The two statutory provisions to which reference has just been made seem far reaching in their effect, and responsibility has been brought home to a number of *de facto* directors. There is not, however, to my knowledge any reported instance of a penalty being imposed in respect of failure to disclose the prescribed particulars of "a person in accordance with whose directions or instructions the directors of a company are accustomed to act," and it may be that the production of evidence to justify proceedings presents too many difficulties. A case which promised to afford some assistance occurred some weeks back, where in the course of police court proceedings a person maintained in his defence that he was not a director of the particular concern. There was, I believe, a committal, but I have not seen any subsequent mention of the case in the Press.

A director may lack the technical or practical knowledge needed to enable him to understand the business of the company with which he is identified, he may be incompetent, and there is judicial authority for saying that he may even be a fool. Yet if shareholders are complacent, such a man may hold office for years, in fact for life—his life, or more probably the company's.

It would not be fair to say that directors in general fail to possess a proper sense of responsibility or to discharge with reasonable efficiency the duties attaching to their office. Since the passing of the Companies Act, 1929, the unscrupulous director has had to walk somewhat warily, for not only has he to reckon with the new provisions affecting his office, but shareholders have been educated to a better sense of their rights and powers than hitherto. They are not overawed by an autocratic chairman or influenced greatly now by soft words and alluring promises. Nowadays members' suspicions would be aroused if a notice inviting them to a general meeting were accompanied by an invitation to a sumptuous repast. Yet in the days of our grandfathers that was the established custom with some companies, and from the directors' standpoint it seems to have been a useful institution—particularly when conditions were difficult.

To gain an adequate idea of the duties and responsibilities of a director, one cannot do better than turn to the dicta of certain eminent judges, by whom a director has been described variously as partaking of the character of an "agent," a "trustee," or a "managing partner." The status of directors has been further judicially described as that of "commercial men managing a trading concern for the benefit of themselves and all the other shareholders in it." In another instance it was stated judicially that a director's duty has been laid down as requiring him to act "with such care as is reasonably to be expected from him, having regard to his knowledge and experience. He is not bound to bring any special qualifications to his office. He is not bound to take any definite part in the conduct of the company's business, but, so far as he does undertake it, he must use reasonable care in its despatch. Such reasonable care must be measured by the care an ordinary man might be expected to take in the same circumstances on his own behalf. He is not responsible for damages occasioned by errors of judgment."

With the above views, collated from the statements of eminent judges, before him a director can hardly complain that there is no statement of statutory effect specifying the standard of duty required of him. With what has just been said in his mind and a realisation of the fact stressed earlier—that the company is an independent person unable to act or speak for itself in respect of which he stands in the position of agent and trustee—there cannot be much excuse for a director failing to act in accordance with a proper sense of responsibility.

A director is, as has been stated, in some respects a trustee. Without specific authority he may not gain any personal profit or do any act with a view to gaining profit for himself. He is only entitled to remuneration for his services as a director if the Articles give him a right thereto or authorise the company in general meeting to vote him remuneration. If, besides being a director, he is engaged upon distinct and definite duties, such as the active management of a department or branch of a business, he will in respect of such duties be an employee of the company and as such be entitled to his agreed salary therefor. Where the Articles forbid a director to hold any other office of profit (as in Table A, 1929), the prohibition must be removed before an appointment is made.

A director may not enter into contracts with the company of which he is a director or be interested in any contract with the company unless the company's Articles allow a director to so contract or be so interested. In that case disclosure of the nature of his interest must be made to the directors at a meeting of the board. If directors misapply or wrongfully pay any moneys of the company—as, for example, by paying a dividend when such is not justified—they are liable for repayment of the amount distributed, for in effect they are trustees of the money so distributed, which may only be dealt with in the manner prescribed by the Articles. For the same reason a director should not accept gifts, and anything he receives he should account for to the company.

On the other hand, the extent to which directors are to be regarded as trustees is limited. For instance, it

is obvious that if property is acquired by a company or a contract entered into with a company, the conveyance or assignment is to, or the contract with, the company, and not to or with the directors executing the instrument. The further distinction may be observed between a trustee in the full sense and the limited extent to which a director comes within the description that directors are not sued and do not sue in their own names, as would be the case with trustees, action being by or against the company.

The word " agent " is capable of more strict application to the duties of a director.

A director, like any other agent, may by his actions only bind a company within the scope of his authority. The subject of the scope of a director's authority is one upon which hours could be spent. Speaking generally, however, persons dealing with a company are deemed to be acquainted with the instrument pursuant to which directors are appointed and by which their powers are conferred, namely, the Articles. A person dealing with a company has not to inquire whether a director with whom he transacts business on the company's behalf is properly appointed, but is entitled, unless the Articles are obviously being disregarded or he is aware of some irregularity, to assume that all is in order. If the directors perform any act which is beyond their powers as defined by the Articles, such act, if it is something within the scope of the company, may be ratified by the company in general meeting, but if the act is outside the powers of the company and so incapable of being ratified by a general meeting, it is void and in respect thereof directors may be personally liable.

In the character of agent it is possible for a director to be liable on the ground of implied authority. If, by way of example, the company's power to borrow is exercisable by the directors and the Articles limit the amount which may be borrowed, the issue of debentures by the directors beyond such limit will be void so far as the company and the debenture holders are concerned, but the directors may be held to be liable personally to the debenture holders as having implied that they had the power to issue the debentures. So long as directors act within the scope of their powers and with reasonable care honestly for the benefit of the company they will not be responsible for mistakes or error of judgment. But a director who is guilty of culpable negligence or default, breach of duty or breach of trust in relation to the affairs of the company, is under liability to make good the loss to the company, and except as provided by the Act in sect. 152, any provision of the Articles or in any contract purporting to exempt directors from liability is void.

A director who is directly or indirectly interested in a contract or proposed contract with a company of which he is a director must declare the nature of his interest to a meeting of the directors. This is a statutory obligation and must be complied with at the meeting at which the contract is first taken into consideration. If the director concerned becomes interested subsequently to the contract being entered into the disclosure must be made at the first meeting of the board after the director becomes so interested. The purposes of the Act are satisfied by the giving of a general notice to the directors that the director concerned is a member of the particular company or firm and is to be regarded after the date of such notice as being interested in any contract which may be made with the company or firm. A director failing to comply with the statutory requirement is liable to a fine not exceeding £100.

### PROCEEDINGS ON INCORPORATION.

When the company receives its certificate of incorporation, it will, if a private company, be entitled to commence business forthwith. A public company must await the issue of a certificate entitling it to commence business, which is granted after the further formalities particular to a public company are complied with.

A meeting of the directors should be held at an early date. At this first meeting the certificate of incorporation should be produced and a copy of the Memorandum and Articles as registered.

The Common Seal should be produced to the meeting and approved. The fact of such approval should be minuted and the minute should include an impression of the seal. A formal resolution to acquire the business which the company is taking over and a resolution authorising the execution of the agreement for sale should be passed. The agreement will be executed under the seal of the company. Formal resolutions should be passed to allot the fully paid shares to the vendors and any other shares which may have been applied for. Decisions in regard to the company's banking account and the manner in which cheques should be drawn should be the subject of a resolution.

If there is appointed by the Articles a governing director the appointment of any other directors and of the secretary will presumably be made by him. He will also settle the remuneration of such directors and secretary. If this is not the case the meeting should appoint a chairman. The secretary should also be appointed and his remuneration fixed.

Where there is a governing director with the predominant powers spoken of earlier it may be decided—provided that the Articles do not require otherwise—that he shall be entitled to sign cheques alone. Except in special circumstances, this is, of course, undesirable, and a second signature should be required.

### EXECUTION OF DOCUMENTS.

Whilst speaking of the decision of the directors respecting cheques, I may refer to the execution of contracts by a company. A contract by a company is executed in the same manner as a contract in respect of the same matter would be executed by an individual; but here I may remind you that the Law of Property Act, 1925, provides that in favour of a purchaser in good faith for valuable consideration (or in favour of a lessee, mortgagee or other person who for valuable consideration acquires an interest in property) a deed is deemed duly executed if the company's seal is affixed in the presence of and attested by one director and the secretary and the deed appears on the face of it to have been so executed. This is in addition to and not in substitution for any other legal mode of execution. In the absence of express provision in the Articles, deeds should be executed in the manner stated.

Before leaving the manner of executing deeds and the question of deciding who is to sign cheques, I would like to remark upon the diversity of ideas existing among many company officials as to the signing of cheques.

By the Bills of Exchange Act a bill of exchange or a promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of or by or on behalf of the company by any person acting under its authority. Cheques or bills should be signed in accordance with those requirements, and it is not sufficient for the person who signs to add " director " or " manager " to his signature, as is frequently done. The person signing does not by so doing show that he is acting by the company's authority.

He should therefore sign "*For* and *on behalf of* the X Company Limited"—so showing that he signs as agent of the company and binding the company, and sign his name, "John Smith, *Director*," by which he shows the authority by which he signs.

THE COMPANY'S BOOKS AND ACCOUNTS.

It is a statutory requirement that the register of members, the register of directors and a copy of any debenture or other charge be kept at the registered office. By Table A in the Act of 1862 companies subject thereto are required to keep the books of account at the registered office of the company.

Under Table A as scheduled to all the Acts subsequent to the Act of 1862, books of account may be kept at such place as the directors determine. I do not know how accountants regard this, but I should expect them to have definite views. To me it seems that the appropriate place for all official books and documents of the company is the registered office.

It is with diffidence that I venture to make any reference before you to the subject of accounts, but on general grounds, perhaps, I may safely do so, and the transfer of a business to a company may afford an opportunity for reviewing the adequacy of the existing system.

Changes may not be welcomed, but the accountant is usually the best judge of these matters, and his service to his client can be service to the community.

Although Table A of 1908 and most sets of special Articles require the keeping by directors of accounts and the submission to the members of a balance sheet and a profit and loss account, the Act of 1908 did not impose any such obligation. Consequently, the imposition of definite and detailed obligations by the Act of 1929 was regarded in some quarters as one of the most important changes made by the new Act. As to the intentions of the draftsman there cannot be any question, though the indefiniteness and vagueness of some of the requirements has occasioned the exercise of much thought by members of your profession, and a valuable contribution to the literature on the subject by one of your members was issued by your Society.

Sect. 122 requires proper books of account to be kept, but the Act does not give any indication as to what are to be regarded as proper books in the case of a going concern. On a winding-up, however, in connection with the power of the Court to deal with officials of a company in respect of which proper books have not been kept for two years preceding the winding-up, the section defines the expression in a manner which suggests a more detailed record of transactions than is common or perhaps practicable in some businesses.

BOARD MEETINGS.

There is, of course, no rule as to holding board meetings, and the question of their frequency depends considerably upon the nature of the business and its extent. It is, however, a good practice to hold meetings at regular fixed intervals; extra meetings can be called if necessity arises.

It is undoubtedly the case that in many companies, especially private companies and public companies with few members, affairs are conducted without due regard to formality, and particularly in connection with board meetings. It may be that unless such informality amounts to irregularity there is little or no harm done. But so many deplorable happenings result from what at stages back in the history of the concern only amounted to laxity, that it is wiser to commence with proper observance of formality. One of the strange perversities of human nature with which I am sure accountants must come in contact is the inclination some people have to go about anything the wrong way.

At the first meeting of the board, therefore, the directors should take formal resolutions for the future conduct of their business.

Only a properly constituted meeting can act, and before business is transacted there must be a quorum. Any business purported to be transacted at a meeting at which there is not present a quorum or of which notice has not been duly given is invalid. Unless provision in regard thereto is made by the Articles, the directors should pass formal resolutions determining the number of directors which shall constitute a quorum. If this is not done a majority must attend to render the board capable of transacting business.

Verbal notice of meetings is permissible, but notice in writing is to be preferred.

The chairman, if not appointed by the Articles, should be decided upon by resolution at this meeting, and provision for election in his absence of some other person to take the chair should be made. Resolutions upon these matters, duly recorded in the minute book of directors' meetings, will govern future meetings until varied by a subsequent resolution.

Ordinarily each director has one vote. If Table A applies the chairman will have a casting vote, and most special Articles also confer such a right. This cannot be varied by a resolution of a board meeting.

In entering up the minutes of directors' meetings it is only necessary to record that a resolution was carried, or not carried, and the number of votes given for or against or the names of the directors voting for or against a resolution have not to be given. Sometimes, however, directors who have voted against a resolution request the secretary to include in the minutes a statement that such and such directors voted against the resolution; where such a request is made the secretary should comply. The directors making the request may hold the view that the decision of the board may be challenged at a general meeting and in their own interest they are justified in asking that their dissent should be on record.

Members are entitled to inspect the minutes of general meetings and to be supplied with a copy thereof, but they are not entitled to inspect the minutes of board meetings or to be supplied with extracts therefrom. It is obviously indiscreet to record the minutes of both classes of meetings in the same book, and separate books should be kept. The question has been asked how the minutes should be written up, and whether they may be typed on separate paper and pasted into the minute book. This plan would make the ordinary minute book very ungainly, but the use of a guard book would remedy that. The argument against so inserting the minutes is that the pagination sequence may not be maintained. If minutes are typed in this fashion and pasted into the book, I think the chairman ought to initial each page so pasted in. My own inclination is towards writing the minutes into a sewn book. Loose-leaf books can be used, but their employment calls for safeguards against interference.

There is, I believe, a machine which enables the minutes to be typed direct into the book, but I do not suppose there are many companies which would consider the cost justified.

I have referred earlier to the incapacity of a director to vote upon a contract or matter in which he is financially interested. He, further, may not be included when considering whether a quorum is present; nor may he vote upon a resolution to reduce the quorum in order to take a disinterested vote upon the matter. Where two

or more directors are interested in a proposed transaction it is not permissible to divide the transaction into two or more parts and for each director to vote when the part in which he is not interested is being considered.

Some companies' Articles contain a provision to the effect that a Memorandum in writing signed by all the directors shall be as effective for all purposes as a resolution duly passed by the directors. Where this provision is acted upon the practice is to paste a copy of the Memorandum, signed by the directors, in the minute book. There may, perhaps, be urgent occasions when such a provision may justifiably be acted upon, but apart from the case of a formal resolution, a decision cannot in this manner be so satisfactorily arrived at as after due deliberation. The view has been expressed judicially that "without meeting directors cannot think." Certainly they cannot think collectively and exchange thoughts, and the power to bind the company by decisions arrived at without opportunity for joint consideration should be exercised with circumspection.

### General Meetings.

In respect of most of the statutory obligations, the directors and secretary and other officers of the company are responsible; but there is one responsibility which is wholly the directors' or managers', and that is the due holding of an ordinary general meeting in each year. Formerly the secretary was included in the persons responsible for default and liable to penalties, but the new Act considerately ignores him in this connection. He is still included with the persons responsible if an annual return is not lodged with the Registrar.

Every company must hold a general meeting once at least in every calendar year, and not more than fifteen months after the last preceding general meeting, and within twenty-eight days after the date of such meeting there must be lodged with the Registrar a return—known as the annual return—containing a list of all persons who on the fourteenth day after the first or only ordinary general meeting were members of the company and of all persons who since the date of the incorporation of the company have ceased to be members. In subsequent returns particulars must be given of persons who have ceased to be members since the last previous return.

You will observe that the return follows the holding of the ordinary general meeting which the company is required to hold once at least in every calendar year. The question is frequently asked whether a return is required during the year in which the company is incorporated. If the company holds an ordinary general meeting the Act requires the return to be made, and if it is within the knowledge of the Registrar that the meeting has been held he will require it. If a company is incorporated in, say, March, it can (unless the Articles specify a date) hold its first ordinary general meeting at any time up to the June of the following year. In the case of a company which was incorporated on the first day of January, the meeting, in my opinion, should be held during the year of incorporation and the return subsequently made.

### General Obligations.

The matters in respect of which companies and their officials get into trouble are mostly in relation to failure to observe some obligation in connection with publication of the name of the company or of the directors or failure to hold a general meeting and file an annual return.

Your client will not be likely to fail to remember that the name of the company must be painted or affixed, and be kept painted or affixed, outside the registered office, but it might be overlooked that the name of the company must also be so painted or affixed outside *every* office or place of business in which its business is carried on. The name must be correctly stated in all official documents, and the section imposing the obligation gives a list of documents upon which the name must so appear. It is here in point to remark that an abbreviation of the word "Limited" is not a strict compliance with the Act. Although "Ltd." and "Ld." have been passed in, for example, a bill of exchange, it is well to see that the full name is properly employed.

The Act imposes various obligations, having for their object disclosure and record of the names of the directors. Thus, within fourteen days from the appointment of the first directors, or of any variation in the directorate, or in the recorded particulars, there must be lodged with the Registrar of Companies the particulars of the directors which are specified by the Act as required to be recorded in the register of directors, to which further reference will be made in a few minutes.

Except in the case of companies incorporated before November 23rd, 1916, the Act requires all business letters, trade catalogues, trade circulars and show cards in which the name of the company appears to have the specified particulars of the directors thereon. If any director has changed his name, his former name (subject to certain exceptions) must be shown. If he is not of British nationality his nationality must be stated, and if his nationality has been changed his nationality of origin must be given. This requirement was imposed upon companies by the Act of 1917 as a consequence of the conversion of businesses into companies in order to evade compliance with the Registration of Business Names Act, 1916, by firms subject to that Act. Proceedings against either a firm or a company failing to comply with the requirements as to publication of name may only be instituted with the consent of the Board of Trade. Latterly the Board has not been inclined to sanction the prosecution of companies in default, except where there existed some reason for proceedings being taken other than failure to comply with the statutory requirements. I believe, as a consequence of revelations in a recent large scale fraud, the authorities incline to additional obligations being imposed upon firms and individuals trading under other than the true names of the partners in the firm or of the individual.

Every company must keep at its registered office a register of directors in which must be entered the name, residential address, nationality, and any business or occupation of each director. If he has not any business occupation, but holds a directorship (other than that of the company concerned) or directorships one of those directorships must be given. It does not suffice to enter "Director of Companies" or "Company Director."

If a director has at any time changed his name any former Christian name or names and surname must be recorded in the register. The provision that particulars of one directorship shall be given resulted from the complaint of the difficulty and work involved under the Act of 1908, which required particulars of all the companies of which a person was director to be given. The manner of getting over this difficulty by requiring *one* directorship to be given seems an Alice-in-Wonderland provision, because a director who has an aversion to his connection with certain companies being recorded (and consequently being disclosed at the Companies Registry) could always secure the incorporation of some concern of a simple or innocent or even demonstrably praiseworthy nature, as a camouflage.

At first sight it might appear that the requirements in regard to nationality and name to be inserted in the

register of directors (and consequently in the filed particulars of directors and the annual return) are the same as are required to appear on letter paper, &c., but in respect of each there is a variation. In the register of directors the nationality must be stated in any case, so that a British born person must be so recorded in the register. On letter paper, &c., it is not necessary to state that fact.

A more important variation occurs in connection with the former name of a director. The requirement that in the case of change of name the former name should be stated is qualified in the case of publication in letter paper, &c., by specified exceptions. These are to the effect that the former name is not required where a change of name took place before the person was eighteen years of age, by succession to a British title or by a woman as a consequence of marriage. So that in any of the instances just mentioned the former name should appear in the register of directors, the annual return, and the particulars lodged with the Registrar within fourteen days of the appointment of the first directors and of any change in the particulars of the directors so recorded.

Confirmation of a special resolution at a second meeting is no longer required, as you all know, but twenty-one days notice must be given of a meeting at which it is intended to submit such a resolution. The meeting may be convened upon shorter notice than that prescribed by the Act if all the members entitled to attend and vote at the meeting so agree. The Act does not indicate how such agreement by the members is to be arrived at or evidenced. Obviously, agreement in writing is desirable and a form of consent should be signed by all the members where it is sought to convene the meeting on short notice. If the attendance of everyone entitled to be present can be assured, agreement can be arrived at before the resolution is submitted. In that case a record should be made in the minutes. The Registrar does not inquire when a special resolution is filed whether the prescribed notice was given. In the case, however, of a resolution to wind up a company voluntarily if the date of the declaration of solvency lodged with the Registrar in a members' winding-up and the date stated in the copy of the resolution lodged for filing does not represent an interval of time which allows for twenty-one days notice of the meeting being given after the declaration was registered, the Registrar will require evidence of agreement on the part of the members to a shorter notice being given.

I would remind you that there must be lodged with the Registrar a copy of any resolution agreed to by all the members which, if not so agreed to, would not have been effective unless passed as a special resolution or extraordinary resolution, and also of any resolution or agreement agreed to by all the members of some class of shareholders which would not have been effective unless passed by some particular majority or in some particular manner. Resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members must also be filed.

### MISCELLANEOUS MATTERS.

Considerations relating to the making of provision for depreciation of plant and machinery and other assets which diminish in value in the course of time by reason of wear and tear and other causes, are matters upon which you will advise and upon which I need not say anything.

It is usual for Articles to provide that a reserve fund shall be created, but, apart from any such provision, the directors have power to create such a fund, and the wisdom of so doing is, of course, unquestionable. If the provisions of the Articles in respect of the creation of such a fund impose special obligations as to the application thereof, such provisions must be closely observed. Usually Articles direct that any sum standing to the credit of the reserve fund may be applicable for meeting contingencies or equalising dividends or for any other purpose for which profits may be properly applied.

If the company has power under its Articles to issue redeemable preference shares, provision should be made for the creation of the capital redemption reserve fund which the section of the Act authorising the issue of redeemable preference shares provides for.

Articles may authorise the directors to declare a dividend, but this is unusual, and the ordinary provision is that dividends shall be declared by the company in general meeting. In that case it is usual for the Articles to state that the company may not declare a dividend of greater amount than the directors recommend, but that the company in general meeting may declare a smaller dividend than that recommended. I need hardly remark that this seldom occurs.

If the Articles authorise the directors to pay an interim dividend, as does Table A of 1929, the directors should satisfy themselves that the company's position justifies them declaring such a dividend. If payment is made without justification, the directors are liable for the repayment of the amount; but shareholders can be ordered to indemnify the directors.

A dividend as soon as declared is a debt to the shareholder, but an interim dividend is not such a debt.

Dividends may only be paid in cash unless the Articles allow payment in any other manner.

Unless the Articles provide otherwise, dividends are payable in proportion to the nominal amount of the shares held by a member. But it is the practice to provide by the Articles—as in Table A of 1908 and 1929—that dividends shall be paid on the amount paid up on the shares.

Income tax is usually deducted when paying dividends. If there is only one class of shares it is immaterial whether tax is deducted or not, but if there are several classes and any class carries the right to a fixed dividend in priority to other classes the tax must be deducted, otherwise the effect would be to deprive holders of shares of the other class of a proportion of the profits due to them.

If dividends are declared free of tax the warrant must have annexed thereto or be accompanied by a statement showing the particulars as to gross amount, rate and amount of income tax, and the net amount actually paid, as specified in the Finance Act, 1929.

A company can, of course, only borrow if it has either express or implied power so to do, and in either case its power can only be exercised subject to the provisions of the Memorandum and Articles. Any borrowing by a company which has not the requisite power, or is in excess of that power, is void.

Assuming the authority to borrow, such power is exercisable by the directors, as are other powers of the company, unless the power is restrained or curtailed by the Articles. In the case of some companies the directors may not borrow beyond the amount of the nominal capital or of the issued capital or an amount specified in the Articles. In the case of public companies the directors are sometimes debarred from borrowing beyond the nominal amount of the preference share capital except with the consent of the holders of such capital.

If to secure a loan a company creates any charge upon property of the company which comes within any of the classes specified in the Act, registration must be effected.

The charge should be registered within twenty-one days after the date of its creation, otherwise it will, "so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company."

If the company acquires property which is already subject to any charge of such a character that if created by the company it would require registration the charge must be registered.

Registration of a charge is effected by producing the instrument creating the charge to the Registrar, duly stamped, with particulars of the charge.

Failure to register a charge created by a company or a charge on property acquired by a company renders the company, its directors and officers liable to a heavy penalty.

The charges specified in the Act as having to be registered at the Companies Registry do not exhaust the charges which a company may create, as certain possible charges have not to be registered unless they are given for the purpose of securing an issue of debentures or are comprised in a floating charge.

Thus :—

A charge on a contract, concession or other chose in action.

A deposit (as security for a loan) of stocks, shares, securities, bills of exchange, delivery warrants or other mercantile documents.

Liens arising in the ordinary course of business and specifically affecting property of the company.

Rights acquired under a garnishee order.

Any one of these charges against the property of a company might exist without being disclosed on the file at the Companies Registry. All should, however, be recorded in the company's own register, because they are charges "specifically affecting property of the company."

## "PAY BEDS" AT HOSPITALS.

King Edward's Hospital Fund for London has published a pamphlet giving a complete list of "Pay beds" available in the London voluntary hospitals. These beds now number 1,788, having increased from 590 in the year 1920, whilst several hospitals have schemes in progress which will lead to an addition to the number. Further particulars with regard to these "pay beds" may be obtained from the Secretary of the particular hospital at the address given in the list. The pamphlet is published by Geo. Barber & Son, Limited, Furnival Street, E.C.4, price 3d., post free.

## THE OFFICERS' ASSOCIATION.

The annual report of the Officers' Association (the Officers' Department of the British Legion) records that during the year ended September 30th, 1933, the total number of cases dealt with was 39,017. Since 1919 the sum of £2,166,888 has been expended on grants, maintenance or clothing for ex-officers and their dependants, including assistance in the education of children. No diminution in the needs is yet in sight; indeed the figures show an increase from 11,777 cases assisted by cash awards in 1928-29 to 17,002 in 1932-33, while the number of new applications has risen from 1,397 to 1,527. Estimates of income and expenditure for 1933-34 show an anticipated deficit of £30,000. A new aspect of the work is the need for maintenance over long periods in cases of chronic illness.

## ROYAL NAVAL RESERVE.

### (ACCOUNTANT OFFICERS.)

### Seventeenth Annual Re-union Dinner.

The dinner was held at the Trocadero on February 19th. A good number of Officers were present, and the Mess President was Paymaster-Commander P. W. Gordon. The principal guests were:—Vice Admiral Sir Dudley Pound, K.C.B., Second Sea Lord, Vice-Admiral G. K. Chetwode, C.B., C.B.E., Admiral Commanding Reserves, Paymaster Rear-Admiral H. W. Woodward, C.B., Paymaster Director General, Captain H. Boyes, C.M.G., R.N., Paymaster Captain John Siddalls, O.B.E., R.N., Deputy Judge Advocate, Captain V. S. Butler, D.S.O., R.N., Paymaster Captain F. J. K. Melsome, R.N., Paymaster Commander J. H. Benwell-Lejeune, R.N. Among others present were :— Paymaster Commander H. V. Such, O.B.E., Paymaster Commander A. H. Sudell, Paymaster Commander A. W. Fry, Paymaster Commander Sir Lacon Threlford, M.B.E., F.C.A., Paymaster Commander A. Simon, O.B.E., A.C.A., Paymaster Commander D. M. Mackenzie, Paymaster Commander R. R. Payne, Paymaster Commander G. D. White, Paymaster Commander H. Elliott Clarke, Paymaster Commander A. A. Garrett, M.B.E., Paymaster Commander T. Martin, O.B.E., Paymaster Lieutenant-Commander C. H. Law, R.N., Paymaster Lieutenant-Commander R. Ashworth, F.S.A.A., Paymaster Lieutenant-Commander R. J. Hayward, F.C.A., Paymaster Lieutenant-Commander A. E. Turner, A.S.A.A., Paymaster Lieutenant F. Ward, Paymaster Lieutenant H. Alden, A.S.A.A., Paymaster Lieutenant H. D. Bell, F.C.A., Paymaster Lieutenant W. J. Dowdell, F.C.A., Paymaster Lieutenant R. J. Pigott, F.C.A., Paymaster Lieutenant T. L. Wilson, F.S.A.A., Paymaster Sub-Lieutenant C. E. D. Enoch, A.C.A., Paymaster Sub-Lieutenant J. Chetwode, Mr. W. J. Gick, C.B.E., Mr. Edward Wilshaw, J.P., Mr. R. B. Dunwoody, C.B.E., Major G. MacLeod Ross, M.C., R.E., Major B. W. Ellis, M.C., A.S.A.A., Mr. C. H. Barclay, A.C.A., Mr. A. C. Davis, A.C.A.

The Mess President proposed the toasts of "The King," and "Absent Friends," followed by the toast of "The Guests," to which a response was given by Vice-Admiral Sir Dudley Pound, K.C.B. Vice-Admiral G. K. Chetwode, C.B., C.B.E., proposed "The Royal Naval Reserve (Accountant Officers)," for whom Paymaster Commander Sir W. Lacon Threlford, M.B.E., replied. The proceedings concluded with the toast of the Hon. Secretary of the Dinner Committee, Paymaster Lieutenant-Commander R. J. Hayward, R.D.

## THE PROFESSION IN GERMANY.

We have received a copy of the "W P. Jahrbuch, 1934" published by the Institut der Wirtschaftsprüfer, Berlin. The book contains a diary, preceded by over 300 closely printed pages of information. The topics dealt with include professional law and the organisation of the profession of Wirtschaftsprüfer; fees charged by Wirtschaftsprüfer; auditing law and practice; trusteeship law and practice; book-keeping and balancing instructions; important provisions of the law relating to companies; tax law; social insurance; and miscellaneous information.

The first section includes a summary of the legal position of a Wirtschaftsprüfer, with references to all the relevant laws and regulations, an account of the organisation of the Institut, and a statement of the principles which its members should observe in the practice of their profession.

# Incorporated Accountants' District Society of Liverpool.

## ANNUAL DINNER.

The annual dinner of the Incorporated Accountants' District Society of Liverpool was held on February 16th, in the Midland Adelphi Hotel, Liverpool.

Mr. ALEXANDER HANNAH, F.S.A.A., President of the Society, occupied the chair, and others present included: The Lord Mayor of Liverpool (Councillor Geo. A. Strong), Mr. E. Cassleton Elliott (President of the Society of Incorporated Accountants and Auditors), Mr. Arthur D. Dean (Chairman, Liverpool Chamber of Commerce), Mr. W. Glasgow (President, Incorporated Law Society of Liverpool), Mr. A. A. Garrett, M.B.E. (Secretary of the Parent Society), Mr. R. W. Lowden (Registrar of the Chancery of the County Palatine of Lancaster), Mr. E. D. Symond (Registrar, Liverpool and Birkenhead County Courts), Mr. James Allcorn (Official Receiver), Mr. H. G. Alexander (President, Liverpool Society of Chartered Accountants), Mr. Walter Moon (Town Clerk of Liverpool), Mr. F. W. Poulsom (President, Liverpool Chartered Accountants' Students' Association), Mr. F. J. Winchester (President, Liverpool Branch, Chartered Institute of Secretaries), Major E. G. Finch (Solicitor, Mersey Docks and Harbour Board), Mr. J. Gregory (Inspector of Taxes, Liverpool), Mr. Percy Corkhill, C.B.E. (Lord Mayor's Secretary), Mr. E. Redmayne Jones (Vice-President, Liverpool Corn Trade Association), Mr. Ernest E. Edwards, B.A. (Parliamentary Secretary of the Parent Society), Mr. R. Miller (Hon. Secretary, Liverpool Branch, Chartered Institute of Secretaries), Mr. Ronald Clayton (Hon. Secretary, Liverpool Law Students' Association), the President of the Scottish Branch (Mr. J. S. Seggie), and the Presidents of the following District Societies of Incorporated Accountants: Manchester (Mr. Joseph Turner), Birmingham (Mr. E. T. Brown), Yorkshire (Mr. Thomas Hayes), Newcastle-upon-Tyne (Mr. W. H. Stalker), West of England (Mr. Sidney Foster), Belfast (Mr. D. Tilfourd Boyd, B.Sc.); Mr. Halvor Piggott, Joint Hon. Secretary, Manchester District Society and Major E. S. Goulding, O.B.E., Vice-President; Mr. Charles M. Dolby, Mr. C. Hewetson Nelson, J.P., Mr. Charles Tunnington, Mr. Alfred E. Noon, Mr. T. T. Plender, Mr. S. W. Hanscombe, Mr. E. Chetter, Mr. W. G. Lithgow, Mr. R. Lewin, Mr. S. Woodyer, A.C.A., Mr. C. Dudley Thayer (Hon. Secretary, Students' Section), and Mr. W. Bertram Nelson (Hon. Secretary).

Following the loyal toast,

The PRESIDENT proposed "The Lord Mayor and the City of Liverpool." He said that during the three years which had elapsed since he was elected President of the Society the city had passed through vicissitudes which might well deter the most dauntless of its citizens. The two primary and essential trades upon which Liverpool depended showed little, if any, sign of improvement. In spite, however, of the conditions prevailing, they remained undeterred and even optimistic. It would appear from the fact that the Government had at long last provided the necessary financial support to enable the merger of the Cunard and the White Star Lines to come into being, that they had now recognised the dire position of shipping. It was to be hoped, at least as far as Liverpool was concerned, that that combination would earn and deserve at least less unsuccessful results than the rationalisation schemes which they knew of in the shipping industry. (Hear, hear.) Following upon that support of the Government it was to be hoped that assistance in some form might be afforded to the coastwise shipping, upon which Liverpool and many other cities so much depended. Whilst he admitted that the subject bristled with difficulties, mostly of a political nature—and he had no desire to enter upon any controversial matter—it was quite obvious to a citizen of Liverpool that a return to complete prosperity in the shipping trade could not be expected whilst the nations continued to wage the present uneconomic tariff war. (Hear, hear.) That the citizens of Liverpool, in spite of the enormous difficulties through which they had passed, had not been idle during the last few years, was evident when they considered the improvements that had taken place in the city. Liverpool was always ready to take advantage of any improvement in trade that might present itself. It must always be a distributing centre, although it was gradually developing as a manufacturing town. To deal effectively with its transport problems it had, in association with other municipalities, almost completed two main arterial roads of immense importance, viz, the East Lancashire Road and the Mersey Tunnel. Those two gateways, one to the east and one to the west, provided the city with transport facilities of which any great town might well be proud, and they opened up immense possibilities of which the fullest advantage must, and would, be taken. The completion of the Mersey Tunnel had demonstrated an important attribute, common to all Merseyside municipalities, namely, the spirit of goodwill and co-operation. Was it too much to hope that one day they might see the unification of all municipal interests on Merseyside? He appreciated the difficulties that must obviously arise, but, given a continuance of that splendid spirit of co-operation to which he had referred, they were not insurmountable. (Hear, hear.) Liverpool looked forward to the future with justifiable optimism. (Hear, hear.)

The LORD MAYOR, in responding, said business men all recognised the importance of accountants. At one time business men relied on their own efforts at keeping accounts, but simplicity of book-keeping had long ago disappeared. The general impression in the minds of most people, outside the accountancy profession, was that income tax and accountancy seemed to come together. At all events, they seemed to have arrived together. Business men certainly looked to accountants to take the first shock of the barrage of forms issued by the Revenue Department, which, whilst no doubt perfectly clear and lucid to accountants, simply left the ordinary taxpayer guessing. Personally, he would sooner do anything than attempt to fill up one of those forms. It was on accountants they relied to tell them whether they had any income, and, if so, to explain the meaning of the Forms A, B, C and D. There was a great deal of confidence placed by the general public in the accountancy profession, and rightly so. He was glad to know, too, that the same confidence existed between their profession and the Inland Revenue. As time passed still greater responsibilities would be placed upon their shoulders, and the public would have every confidence in the ability of the accountants to guide them through those increasing difficulties. Referring to Mr. Hannah's remarks, he said the hope of every citizen of Liverpool was that the merger between the Cunard and White Star Lines would be to the city's benefit. He hoped also that it would not result in any increased unemployment or in any reduction in the tonnage of the port. Liverpool and Merseyside were in a very favourable geographical position; they were in closest proximity to large centres of population, and they had a marvellous dock system, with railway and road connections, which were all features that gave them great natural advantages. They must make full use of those

advantages in the great struggle for trade supremacy. As to the Incorporated Accountants' headquarters in London, he congratulated their governing body upon acquiring premises which had traditions and dignity well suited to the history of their Society. The weather vane was a ship, which was a very happy symbol of trade, for accountants were becoming more and more pilots of commerce. (Applause.)

Mr. A. D. DEAN (Chairman, Liverpool Chamber of Commerce) submitted "The Society of Incorporated Accountants." He said the Liverpool Chamber of Commerce, of which he was chairman, had many bodies connected with it, and certainly not the least in importance was the profession of accountancy. There was no doubt about the usefulness of their Society. Personally he very much hesitated to criticise any accounts prepared by accountants. Speaking as a lawyer, he said when it came to any matter of accountancy lawyers had not got a "look in" at all. There could not be any doubt about the usefulness of the accountant in modern life. They could not get on without him. The accountant did not carry on his business entirely from a selfish point of view, but took his fair share in public life. (Hear, hear.)

Mr. E. CASSLETON ELLIOTT, F.S.A.A. (President of the Society of Incorporated Accountants and Auditors), replied. At the outset he expressed pleasure at seeing Mr. Hannah in the chair. Mr. Hannah and he were friends of many years standing. Proceeding, he said the success and well-being of the Society of Incorporated Accountants, numbering to-day over 6,000 members, depended upon the assistance received from various units or District Societies, which made up the whole. The Liverpool District Society was always to the fore in making new suggestions for the consideration of the Council. He would like to refer to an experiment, which he hoped would be tried next July. It was proposed to hold a post-graduate course, it was hoped at one of the Universities, lasting for four days. That course would be open to all junior Incorporated Accountants who, although they had completed their examination studies, desired to take the opportunity of an advanced course of study. The consideration of a number of practical subjects should prove of great value to those who attended. He appealed to all members to make a special effort to be present, particularly as the Liverpool District Society was responsible for the suggestion, and as its success depended upon the response. He would ask principals, wherever possible, to allow members of their staffs leave of absence to attend that course. A year ago, with the approval of the Council, the Committee in Liverpool established a Consultative Committee, whose duty it was to advise members in difficulties which arose in practice. He was glad to learn that no fewer than six panels had been formed, and that the year's experiment had been of great value to members generally. It was interesting that, following the initiative taken in Liverpool, a similar Committee had been established in South Africa. (Hear, hear.) There had been a slight general improvement in trade and industry in the country during the past year, and particularly during the last few months. He was glad to learn that that improvement had been shared by the Port of Liverpool, which, he was told, was busier than it had been for some time past. The methods of conducting trade and business in this country, and, in fact, all over the world, were undergoing a great change. The industrial revolution which started 150 years ago still continued. The advances and rapid strides in science continued, and the luxury of yesterday was the necessity of to-day. As scientific research and mechanisation led to new methods of manufacture, production increased and the problem of to-day was to increase consumption so that production might be absorbed. In the past our surplus production was absorbed by overseas customers, but to-day, to a very large extent, those customers were themselves manufacturing, and were, in fact, anxious to dispose of their own surplus production. The result had been an intense wave of nationalism which had spread throughout the whole civilised world. Every country sought to protect its own industries by tariffs, quotas, subsidies and the like. Upon those were superimposed exchange restrictions and fluctuations which made export trade extremely difficult, and with some countries almost impossible. The problem was claimed to be a new one, and therefore new methods were sought to solve it. But was the old economic law of supply and demand really dead, when in certain parts of the world there were peoples who could consume those excess productions if only those difficulties did not exist? The Chairman of one of the big banks, in his recent address to his shareholders, referred to new methods of control and organisation. He said that the practice had grown of establishing statutory boards to control various organisations, including even broadcasting, with attempts to regulate prices, eliminate competition, control output, create monopolies, or compel amalgamations. He said that possibly something of the sort was necessary at times like the present, but he did not believe that any government or any bureaucracy was capable of shouldering the heavy responsibility of saying how the industries of a country should be run. Mr. J. Beaumont Pease also said "trade consists of the exchange of goods. Every man is a seller as well as a buyer, and his power to consume is provided by his power to produce. If he cannot sell, neither can he buy." Mr. Beaumont Pease considered that the chief obstacle to prosperity was the direct growth of nationalism, and it was against that tendency that their energies ought to be chiefly directed. In this country the Board of Trade was busily engaged in making trade agreements with foreign countries which had as their objective the exchange of goods between us and them. The Marketing Boards were experiments which were being explored very thoroughly by the Minister of Agriculture, and already his energy on behalf of the farmer in this country had been most effective. Marketing schemes had already been arranged and were operating for milk, pigs and bacon, fish and wheat. A proposed scheme affecting beet sugar was announced the other day, and he understood that schemes were suggested for butter, eggs and potatoes. The Minister was most active in his Department, and, in addition to his many duties, he was elected Rector of the Aberdeen University, to whom he delivered his Rectorial address on January 1st. In that address, which was entitled "The Endless Adventure," Mr. Elliot said: "Government and business are becoming so closely associated that they have to work out a concordat, or trip each other up at every turn." The Minister then discussed various problems which he said could not be solved by Governments alone, but, in his opinion, could not be solved without them. Finally, he said that the only hopeful method at the present time was "by trial and error." In his (Mr. Cassleton Elliott's) view, it was expedient to bring the producer and the consumer more closely together, but those experiments in Marketing Boards, and other similar types of organisation, must be carefully watched to see that they did not destroy individual enterprise and initiative. Government assistance in industry was good up to a point, so long as the Government did not attempt to control industry. He would like to give them a concrete example. The Coal Quota had

been with them for some years now, and its results were, at most, only a mixed blessing. It was, he understood, not very popular with the shipping community. About six months ago it was reported in *The Times* that a British vessel had arrived in London to discharge a cargo. The owners received an offer, on account of charterers in Vancouver, to send the ship to the Pacific Coast of North America with a cargo of Yorkshire coal. From there she would probably have returned with a mixed cargo of grain and lumber. Unfortunately, owing to the working of the Coal Mines Act, although the coal was available and could have been brought to the surface within a short space of time, the Quota System did not permit of it being mined then. The owners had to decline the offer, and the vessel was held up on the North-East Coast. Thus by the Quota System a vessel of 9,300 tons was laid up and her officers and crew were thrown out of employment. He saw a few days ago that arrangements had now been made by which the Quota System was not to operate in similar cases, but, unfortunately, in that case the mischief had been done. Had the coal owners and/or the shipowners been in a position to decide as to whether the cargo of Yorkshire coal should be shipped there would have been no doubt as to the answer. Elasticity, which was needed, was not one of the strong points of bureaucratic control. He felt that, as Incorporated Accountants, it was their duty to study those questions. They might anticipate that in due time the old economic law of supply and demand would function more normally, and they ought to keep an open mind when they were consulted professionally, or were asked to advise clients upon the position or reorganisation of a business. (Applause.)

Mr. W. G. LITHGOW, F.S.A.A., proposed "Our Guests." After alluding, individually, to some of the guests present, he said members of all the professions represented there that evening agreed that they would attain the highest efficiency and render the greatest service to the common weal by friendly co-operation one with another.

Mr. WILLIAM GLASGOW (President of the Incorporated Law Society of Liverpool), in responding, said in the course of his professional experience it had been his great pleasure and privilege to have had the assistance of many accountants belonging to their Society, and he had had the greatest possible help from them. He wondered, indeed, how they could possibly get on without them. He was glad to think that the members of the legal and accountancy professions worked so harmoniously together. The Society of Incorporated Accountants had attained a very high position in the life of the country, and helped its members to give excellent service to the public. In his own business he had been enormously assisted by accountants, some of whom he saw around him that night.

Mr. D. TILFOURD BOYD (President of the Incorporated Accountants' Belfast and District Society) also responded.

Mr. BERTRAM NELSON (Hon. Secretary of the Incorporated Accountants' District Society of Liverpool) proposed the health of the President. He said Mr. Hannah first became a member of the Committee in 1910. For 17 years of that 24 years Mr. Hannah served as Hon. Secretary; now to that remarkable record of service he had added three most successful years as President. They all knew that his secretarial years were extraordinarily successful. Everything he touched had been adorned by him. He had excelled in the matter of hard work and an abiding interest in their Society. He had been an extraordinarily good President. He had presided at over 100 of their meetings; he had been to dinners all over the civilised world, besides being twice at Stoke-on-Trent. (Loud laughter.) There was no name which they held in greater honour, esteem and affection than that of Mr. Hannah. (Hear, hear.)

Mr. HANNAH, in acknowledging the compliment, said that throughout all the period of his service he had deemed it a great honour to serve the Incorporated Accountants' District Society of Liverpool.

## Reviews.

**The Accountant's French Commercial Dictionary.** *By H. C. Bach, A.C.A. London: Gee & Co. (Publishers) Ltd., 6, Kirby Street, E.C.1.* (84 *pp. Price 5s. net.*)

As the title indicates this is a dictionary of commercial terms used in relation to accounts and business matters generally, giving the French equivalents of the terms used in this country. It is sometimes difficult to get an exact equivalent to a technical term, but as the dictionary has been prepared by a professional accountant who was for some time resident in France, the French expressions should be reliable. Both the English and French terms are given alphabetically.

**Alteration of Share Capital.** *By P. Lea Reed and C. Wright, A.C.A. London: Sir Isaac Pitman & Sons, Ltd.* (144 *pp. Price 5s. net.*)

There is set forth in this book the steps necessary for carrying through alterations of share capital such as subdivision of shares, return of capital, repayment of redeemable preference shares, &c., and the appendix contains numerous specimens of forms and notices required in connection therewith. Information is also supplied with regard to notices of distringas and lien, lost certificates, powers of attorney, and other matters.

**Dowell's Income Tax Laws: Second Supplement to Ninth Edition.** *By W. B. Blatch, B.A., and T. MacD. Baker. London: H.M. Stationery Office, Adastral House, Kingsway, W.C.2.* (600 *pp. Price* £1 1*s. net.*)

Supplements to books embodying legal decisions are never so good as new editions with the text altered to give effect to the amendments, but the method of compilation of this supplement is so designed as to overcome the drawback as far as possible. This volume embodies the contents of the first supplement. In Part I is given the Income Tax Sections of the Finance Acts, 1927 to 1933, together with notes at the foot of certain of the sections giving references to any decisions which have been given bearing upon them. Part II deals with the amendments to the Acts and gives notes on the decisions subsequent to the ninth edition of the book. These notes are classified under the page numbers of the ninth edition so that it is easy to refer back to that volume. As Mr. Blatch is Assistant Solicitor to the Inland Revenue and Mr. Baker is employed in that office, it may be taken that the notes on the decisions represent the Inland Revenue's point of view.

Mr. N. A. Stott has resigned from the Committee of the South African (Northern) Branch of the Society, and Mr. F. C. McConnell has been appointed in his stead.

# Incorporated Accountants' District Society of Notts, Derby & Lincoln.

## TWENTY-FIFTH ANNIVERSARY DINNER.

The Incorporated Accountants' District Society of Nottingham, Derby and Lincoln held their 25th Anniversary Dinner at the Victoria Station Hotel, Nottingham, on Wednesday, February 7th. Mr. F. A. PRIOR, the President of the District Society, occupied the chair, and amongst those present were the Lord Mayor of Nottingham (Alderman John Farr, J.P.), Mr. T. J. O'Connor, K.C., M.P., Sir Thomas Keens, Professor Hugh Stewart, C.M.G. (Nottingham University College), Mr. Jesse Boydell (City Treasurer, Nottingham), the Sheriff of Nottingham (Councillor E. Purser), Mr. A. M. Lyons, K.C., M.P., Mr. A. C. Caporn, M.P., Mr. E. E. Edwards, B.A. (the Parliamentary Secretary of the Society), Mr. W. T. Manning (Hon. Secretary, Leicester District Society), Mr. P. G. Granger (Secretary. Nottingham Society of Chartered Accountants), Mr. J. T. Whitehorn (Auctioneers' and Estate Agents' Institute), Mr. E. Bailey, F.C.I.S., Mr. C. T. Carlisle, Mr. R. D. Rider (Editor, *Nottingham Journal*), Mr. F. Goodliffe (President, National Federation of Produce Merchants), Mr. A. B. Griffiths (President, Sheffield District Society), Mr. E. T. Brown (President, Birmingham District Society), Mr. F. Armstrong (Nottingham Law Society), Mr. F. W. Ogg (Inspector of Taxes, Nottingham), Mr. W. O. Burrows (Secretary, Nottingham Chamber of Commerce), Mr. H. Piggott (Joint Hon. Secretary, Manchester District Society), and Mr. S. I. Wallis (Hon. Secretary of the Nottingham District Society).

Mr. E. Cassleton Elliott, President of the Society of Incorporated Accountants and Auditors, was to have responded to the principal toast, but owing to his recent accident he was unable to be present, and the response was made by Sir Thomas Keens, a Past-President of the Society.

Mr. T. J. O'CONNOR, K.C., M.P., submitted "The City and Trade of Nottingham." He said he had always been struck with the high sense of civic spirit prevailing in the city, and he, as representing an important division of Nottingham, always heard with pride any reference in the House of how far ahead of other cities it was in relation to municipal enterprise. He instanced the great housing schemes which had made Nottingham famous throughout the country. It was noteworthy that the unemployment figures in Nottingham had fallen in the past year by no less than 30 per cent., and notwithstanding the fact that the figures were more formidable than they liked to see, Nottingham had not felt the intensity of industrial depression that other cities had felt. One of the reasons was that Nottingham had a well balanced and well planned industrial organisation so that when one industry felt a draught another felt prosperity. Last but not least, there were in the city trades dependent on skill and craft to a degree not possessed by other trades in the country. In a reference to the general position, he could not help feeling that many of them must feel glad they were Britons. He did not believe anybody in this country at the present moment would change his lot for that of any other national. Round the world all the buttresses of democracy were toppling, one nation after another experimenting, everybody groping for some form of government the like of which they would not tolerate. They enjoyed a position of security, had steered clear of danger, and had established a government that enabled democracy to survive in its first home. They were in the finest position to take advantage of the returning sanity of the world, because of their ordered life, their allegiance to forms that were realities. Concluding, Mr. O'Connor emphasised that this country would be ready to take advantage of trade revival.

The LORD MAYOR OF NOTTINGHAM, in his response, said he would like to touch upon something that might be of interest to accountancy as applied to public life. In his 21 years service on the City Council, in the early period expert accountancy was almost conspicuous by its absence. They had to-day a very efficient City Treasurer who must first of all be an able accountant. They thus had permeating throughout important industrial concerns with many millions of capital, turning over hundreds of thousands of pounds a year, the advantages of what was not available a few years ago, the value of expert accountancy almost daily in those various departments. (Hear, hear.) As a result they had evidence in the last two or three years that committees of trading departments had valuable guidance half-yearly or quarterly from expert accountancy instead of the sort of thing existing when he first sat on the Council, a wait of a couple of months at the end of the year to get surprising figures relating to trading. That was a stage in the right direction. The system of a professional auditor was a sound one, and he was definitely in favour of it. Years ago few industries thought of going to an accountant at the end of the year, but to-day that system was entirely altered, although the value of it was only just being appreciated by men in business and public life. From personal experience of recent years he had profited by having side by side with him, week by week and month by month, people associated with the accountancy profession, guiding and helping him, giving him confidence to go ahead and develop business instead of waiting twelve months later to find the opportunities that were missed. He congratulated the Society on attaining its 25th anniversary, and also on its laudable objects. One of the objects was to promote and foster efficiency and accuracy in figures in commercial life. The Society's educational objects were much to its credit. (Applause.)

Professor HUGH STEWART, C.M.G., Principal of the Nottingham University College, proposing "The Society of Incorporated Accountants and Auditors," said he felt deeply conscious of the honour in proposing that toast. He believed he had been given the opportunity because he represented the college which had a great deal to do in organising classes leading to a diploma of the Society. The college was fortunate in having as teachers men universally known in the city as particularly experienced and qualified practitioners of the profession. The ordinary men in the street definitely appreciated the immense importance and increasing responsibility of the accountancy profession. As the complexity of life increased, so did the standard of their profession and the calls made upon it increase with the complexity of modern business life. In America entrance to their profession was almost invariably through the universities, and recently a learned professor had remarked that universities might be of assistance to their members in preparing courses. He thought the universities would be perfectly prepared to do their part provided accountants would be satisfied and content to accept a university standard, whilst rightly insisting upon a long term of practical experience. In common with all other interested observers of their profession, he would like to pay tribute to the efforts of their Society in raising the standards not merely in the professional examinations, but in everything that affected the prestige of their great and

responsible profession. He was tempted to add, although it might be indiscreet, that personally he hoped it might be found possible in the immediate future that the obstacles at present in the way of the union of their great Society with the other great Society of accountants might be swept away and thus there might be established the principle that "union is strength." (Hear, hear.) Professor Stewart, in conclusion, paid a tribute to Sir Thomas Keens, mentioning his work as a Member of Parliament, and particularly the important part he played in financial legislation.

Sir THOMAS KEENS, F.S.S.A., in his reply, said Mr. Cassleton Elliott, the President of the Society, who was confined to his house with an injured foot, had charged him to express his very deep regret at being absent that evening and his very best wishes for the success of the District Society. Nottingham, said Sir Thomas, was very fortunate in the possession of its University College, due to the benefactions of the late Lord Trent. He would personally welcome very much closer connection between the accountancy bodies and the Universities. Professor Carr-Saunders, of Liverpool University, had recently declared that the universities were no more alive to the possibilities of constructive association with modern problems than were the professions. They had abrogated any claim to leadership, they were content to do the day's work which might be set before them. If things were otherwise, one of the first steps they would take would be to try to bring entrants to accountancy within their walls; but if that was to come about, accountants would have to knock on the gates and demand admission. They were endeavouring to begin the move of closer co-operation. Dr. Roland Burrows, K.C., a very brilliant legal examiner, had been interesting himself for a considerable time. They were making a beginning this year. They proposed to institute a post-graduate course to be held in the month of July, and he was anticipating a general appeal from the Council of the Society to the District Societies for their support in that project. Everybody agreed that the idea was excellent, following the best experience in other professions. It would succeed or fail according to the measure of support accorded by District Societies. The kingdom was covered by a network of District Societies during his presidency, and apart from the fact that he was Chairman of the District Societies Committee, he wanted to see that the experiment succeeded. Sir Thomas urged those present to seek out likely candidates, urge their attendance, assist financially if necessary, and, as employers, be prepared to grant necessary leave. He was aware that might be a matter of considerable difficulty. As to the Society generally, it continued to progress in numbers and influence. Examinations were getting more and more severe. When they considered that only something like 44 per cent. of the candidates passed the Final they had the evidence of a very severe test for those who desired to become Incorporated Accountants. But the Society had always placed the greatest possible importance on training, and although he hoped in the future they would link up with the universities he still held the view that there was no portion of the training so valuable for future years as that which was gained in practical work in the profession itself. (Hear, hear.) He had no apology to make for the fact that they alone of the major societies provided facilities for men who had got the necessary brains and character but lacked the opportunity of serving articles. But Sir Thomas confessed he was not a little concerned about the future of the qualified candidate. Modern conditions were undoubtedly forcing into the profession an unduly large number of entrants. It was much the same in other countries. In some the only outlet for the candidate barred to industry was in politics, hence the number of countries where politics became a profession. Theirs was an expanding profession. In recent years he had seen a considerable number of new firms established, rising to considerable importance, employing considerable staffs, having positions of great responsibility, presumably with reasonable emoluments. The past three years had been a particularly serious time owing to the shrinkage in world trade to a third of what it was in 1929. But since March last year the movement had been in the direction they all desired. That improvement appeared likely to continue. Therefore he suggested to members of his profession and people outside this was a time for gratitude and acknowledgment to the Government for the action they took in putting the finances of the country on a sound basis. Nevertheless the country had a good deal of leeway to make up. A great many people were saying salvation lay in a monetary policy, but a monetary policy alone could not be the salvation of trade. Balanced budgets and cheap money had produced sound economic conditions, and this seemed to him to prove that, given confidence, induced by stable government and the absence of prodigal spending, sterling not on a gold basis might be maintained as the most stable and popular currency of the world, and he looked forward to a very great extension of the sterling bloc amongst the countries. What part could accountants play in the problems of the future? He suggested that the success or failure of every scheme would depend upon absolutely reliable statistical data being supplied to executives. Whatever the future might be, with that adaptability and flexibility of mind that training and practical experience in the profession gave, Incorporated Accountants would rise to the occasion and play their part manfully for the good of the community and for the honour of the profession. (Applause.)

Mr. E. E. EDWARDS, B.A., LL.B., Parliamentary Secretary to the Society, proposed the "Incorporated Accountants' District Society of Nottingham, Derby and Lincoln," eulogising the Nottingham District Society as a highly regarded and important section of the Society of Incorporated Accountants. The latter body could not function at all, he said, unless the District Societies were in a flourishing condition, with their organisation and personnel in the right hands. Nottingham was fortunate in that respect in having Mr. F. A. Prior as chairman, and he paid tribute also to Mr. S. I. Wallis, the Hon. Secretary. He was proud to propose the toast on the occasion he might call their "silver wedding" or 25th anniversary. District Societies were vitally important for the reason amongst others that no man could live entirely to himself. He must live in a corporate society. He was not interested in a corporate state, but he was interested in a corporate society, and he advocated regular attendance at all meetings and functions.

Mr. F. A. PRIOR, the President of the District Society, in responding, said that of the members recorded as attending their first meeting in 1909 there were only three survivors, two of whom were present at the banquet that evening. He had been President for six years and was honorary secretary from 1919 to 1926. Altogether he had put in 14 years active service. The original membership of the Society was about 20, and in 1928 it had increased to 180. At that time they were incorporated with Leicester, which city was so strongly represented that a Society was formed there. Although they parted with about 100 members to Leicester, the pruning had a virile effect, for at the end of the next year the membership recovered to 164, in 1933 it stood at 216,

and to-day, with students, it was over 230. Sir Thomas might wonder how 230 members got a living, and had confessed himself concerned about prospects, but despite the fact that Nottingham had 15,000 unemployed, not one was an accountant's clerk. He did not want it to be interpreted that they were more successful than any other district. Their Society and all District Societies owed a great deal of gratitude to Sir Thomas Keens, who took a leading part in the re-organisation of the District Societies. He was instrumental in building up the District Societies throughout the country. The object of a District Society was to band members together for mutual help, assistance and guidance, to further, watch and observe conditions locally, and to discuss suggestions which he hoped would be helpful. The Lord Mayor had made reference to the appointment of professional auditors to the City of Nottingham. In the past he had made the suggestion that it was high time the city fathers should modernise their system of audit and do away with the antiquated system of elective auditors which it had enjoyed so long, and he was glad to see that was now almost an accomplished fact. Observing the presence of members of the banking profession, he made reference to representations which had been made with respect to banks undertaking taxation work. It was not the right and prerogative of accountants to undertake that work alone, but whilst to a great many of the larger firms practising in London and the provinces the matter of these small income tax matters was not of great moment, he wanted to say that a considerable proportion of the members of their Society were provincial practitioners to whom the small fees were very acceptable.

Mr. S. I. WALLIS also acknowledged the toast, and thanked the proposer for the kindly reference to his own work as Hon. Secretary.

Mr. JESSE BOYDELL (City Treasurer, Nottingham) gave the toast of "The Guests," and the reply was made by Alderman H. BOWLES, of Nottingham. Despite the collective efforts of politicians, he said, commercial industries were winning through in a difficult time. He was a man who believed in associations. It was not often he had opportunities to throw bouquets to Members of Parliament, but he would thank them for bringing into being an Act of Parliament that enabled Nottingham to have its city accounts audited by a professional accountant. He was delighted that the members of the City Council had seized the opportunity of protesting against the procedure of having city auditors elected by vote of the public, but controlled by the strength of the various political organisations, putting men into positions who had probably no ability from the accountancy point of view. Now they were embarking on a new procedure, and whatever firm or firms were selected to go into the city's accounts at least it would give confidence to the public of Nottingham to know that the accounts were overhauled and scrutinised by people who knew the job.

Mr. C. F. CARLISLE, A.S.A.A., proposed the health of the Chairman, and, in reply, Mr. PRIOR commended Mr. Wallis and the Committee for the perfect organisation.

## Professional Appointment.

Mr. C. H. Huntley, A.S.A.A., has been appointed Clerk and Accountant to the Urban District Council of Penrith, Cumberland, his duties to commence on April 1st.

## Incorporated Accountants' Students' Society of London and District.

### ANNUAL MEETING.

The forty-third annual meeting of the Society was held at Incorporated Accountants' Hall on February 20th, the President, Sir Stephen Killik, occupying the chair.

The President, in moving the adoption of the report and accounts for 1933, said the Society had had a very successful year. The lectures were all well attended, which showed that they were appreciated by the members. A feature of the past year was the prize scheme, by which the Committee were able to award prizes to certain successful members in the Parent Society's examinations. The scheme had given considerable satisfaction to the members, many of whom had been successful in gaining prizes. It was unnecessary to comment upon any further points, as the printed report of the year's work had been circulated to all members, who had, no doubt, read it with interest.

OFFICERS AND COMMITTEE

The following officers and Committee were appointed for the ensuing year: President, Sir Stephen Killik, J.P., F.S.A.A.; Vice-President, Mr. G. Roby Pridie, F.S.A.A.; Committee: Mr. W. Strachan, F.S.A.A., Mr. S. T. Morris, F.S.A.A., Mr. A. A. Garrett, M.B.E., Mr. M. J. Faulks, M.A., F.S.A.A., Mr. H. E. Colesworthy, F.S.A.A., Mr. C. E. Wakeling, F.S.A.A., Mr. W. D. Menzies, F.S.A.A., Mr. L. H. Plumpton, and Mr. F. R. Witty; Honorary Treasurer, Mr. Henry J. Burgess, F.S.A.A.; Secretary, Mr. James C. Fay, A.C.I.S.; Honorary Auditors, Mr. W. H. Payne, F.S.A.A. and Mr. W. G. Payne, F.S.A.A.

### Annual Report.

The Committee have pleasure in presenting their forty-third annual report and accounts for the year ended December 31st, 1933.

MEMBERSHIP.

During the past year 235 new members were elected. At December 31st, 1933, there were 1,824 members on the roll, consisting of 176 honorary members in practice, 318 honorary members not in practice, and 1,330 ordinary members.

REVIEW OF THE SOCIETY'S WORK FOR THE PAST YEAR.

During the Spring and Autumn sessions ten meetings were held, all of which were well attended. The Committee arranged that the scope of the syllabus of lectures should be as comprehensive as possible.

The Committee desire to express their thanks to members of the legal profession and representatives of the Press who were good enough to read papers, as well as to a number of Incorporated Accountants who contributed to the programme.

A feature of the year's work has been the inclusion of one lecture each session designed to meet the special needs of students. These lectures, with blackboard illustrations, were give by Mr. W. J. Back, A.S.A.A., and were much appreciated.

Following the scheme adopted at the last annual meeting, prizes given in connection with the examinations of the Society of Incorporated Accountants and Auditors have been awarded as follows:—

NOVEMBER, 1932.
*Final Examination.*

First Prize—J. M. DRUMMOND (*who obtained the Fourth Certificate of Merit awarded by the Parent Society*).
Second Prize—Miss G. L. COWTAN (*who obtained the Fifth Certificate of Merit awarded by the Parent Society*).

*Intermediate Examination.*

First Prize—A. E. LANGTON (*who obtained the First Place Certificate awarded by the Parent Society*).

Second Prize—H. E. GUNTON (*who obtained the Third Place Certificate awarded by the Parent Society*).

MAY, 1933.

*Final Examination.*

First Prize—B. C. CORNES (*who obtained the Second Certificate of Merit awarded by the Parent Society*).

Second Prize—J. R. PARAMOUR (*who obtained the Third Certificate of Merit awarded by the Parent Society*).

*Intermediate Examination.*

First Prize—A. P. G. WALTERS (*who obtained the Fourth Place Certificate awarded by the Parent Society*).

Second Prize—J. H. GADSDEN (*who obtained the Fifth Place Certificate awarded by the Parent Society*).

NOVEMBER, 1933.

*Final Examination.*

First Prize—L. KIGHTLEY (*who obtained the Third Certificate of Merit awarded by the Parent Society*).

*Intermediate Examination.*

First Prize—W. J. BRIDLE (*who obtained the Second Place Certificate awarded by the Parent Society*).

Second Prize—R. S. B. AMES (*who obtained the Third Place Certificate awarded by the Parent Society*).

The following is a list of lectures and discussions held during the Spring and Autumn sessions :—

Spring, 1933 :—

"The Most Tragic Book-keeping in History." By Mr. Leonard J. Reid, City Editor, *Daily Telegraph*.

"Accounts from Incomplete Records." By Mr. R. A. Fricker, Incorporated Accountant.

"Property of the Bankrupt which Passes to the Trustee." By Mr. Oswald Griffiths, M.A., LL.B., Barrister-at-Law.

"How to Detect Errors where Accounts do not Balance." By Mr. W. J. Back, Incorporated Accountant.

"Computation of Profits for Income Tax." By Mr. J. S. Scrimgeour, O.B.E., Barrister-at-Law.

Autumn, 1933 :—

"The City Editor's Weekly Round." By Mr. A. S. Wade, City Editor, the *Evening Standard*.

"Responsibilities and Duties of Directors and Officers in a newly-formed Company." By Mr. Herbert W. Jordan.

"A Trusteeship in Bankruptcy—the Practical Aspect." By Mr. W. J. Back, Incorporated Accountant.

"The General Principles of Income Tax Taxation." By Mr. N. M. G. Faulks, M.A., LL.B., Barrister-at-Law.

"Executorship Accounts in Relation to Apportionments, with Blackboard Illustrations." By Mr. W. H. Grainger, Incorporated Accountant.

EXAMINATIONS OF THE SOCIETY OF INCORPORATED ACCOUNTANTS AND AUDITORS.

The following members of the Society obtained Honours at the Parent Society's examinations during the year 1933 :—

MAY—*Final.*—Bernard Charles Cornes, *Second Certificate of Merit*; Joseph Richard Paramour, *Third Certificate of Merit*; Herbert Arthur Manning, *Fourth Certificate of Merit*; Henry George Echart, *Fifth Certificate of Merit* Henry Robert Elliott, *Seventh Certificate of Merit*.

MAY—*Intermediate.*—Arthur Paul Goth Walters, *Fourth Place Certificate*; John Henry Gadsden, *Fifth Place Certificate*; Edward Bennion, *Sixth Place Certificate*; Frank Andrew Tyler, *Eighth Place Certificate*; John Rowland Hill, *Ninth Place Certificate*.

NOVEMBER—*Final.*—Leonard Kightley, *Third Certificate of Merit*.

NOVEMBER—*Intermediate.*—Walter John Bridle, *Second Place Certificate*; Russell Spencer Byhurst Ames, *Third Place Certificate*; William Joe Ward Webster, *Fourth Place Certificate*; David Lumsden Brown, *Fifth Place Certificate*; Stanley Thomas Lawrie, *Sixth Place Certificate*.

"TRANSACTIONS."

The 37th volume of "Transactions" for the year 1932-33 has been published, and gratuitous copies are available to members of the Students Society at Incorporated Accountants' Hall.

OFFICERS AND COMMITTEE.

Under Rules 3 and 5 the officers and members of the Committee and under Rule 10 the honorary auditors retire from office. The members of the Committee, and the honorary auditors, being eligible, offer themselves for re-election.

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**Syllabus of Lectures and Discussions.**

**1934**

Feb. 20th.—Lecture: "Accountancy, Finance and Civilisation," by Mr. Francis Williams (City Editor, *Daily Herald*). *Chairman:* Sir Stephen Killik, J.P. (President of the Society).

Feb. 27th.—Lecture: "Economics and its Principles," by Mr. W. H. Coates, LL.B., B.Sc.(Econ.), Ph.D. *Chairman:* Mr. E. Cassleton Elliott (President of the Society of Incorporated Accountants and Auditors).

Mar. 7th.—Lecture: "Partnership Accounts," by Mr. W. W. Bigg, F.C.A., Incorporated Accountant. *Chairman:* Mr. G. Roby Pridie (Vice-President of the Society).

Mar. 13th.—Lecture: "Practical Points in Company Work," by Mr. W. J. Back, Incorporated Accountant. *Chairman:* Mr. William Strachan, Incorporated Accountant.

Mar. 20th.—Lecture: "Damages and Compensation in Relation to Income Tax," by Mr. Roland Burrows, K.C. *Chairman:* Mr. Richard A. Witty, Incorporated Accountant.

The meetings will be held at Incorporated Accountants' Hall, Victoria Embankment, London, W.C.2.

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## ALTERATION OF AUDITOR'S CERTIFICATE

In the Report of the Chief Registrar of Friendly Societies, the following appears under the heading of "Alteration of Auditor's Certificate" :—

The annual return of a branch of an Order had been signed by a Public Auditor as being subject to a special report. The reference to the special report was deleted from the return by an Order official and the return was submitted to the Registrar without a copy of the report. When asked for an explanation, the official said he did not think that the report was a "special" one or that a special report should have been made. The Registrar took the view that interference with the functions of a Public Auditor was a serious matter and said that the failure to forward a special report constituted an offence under the Friendly Societies Act. He said it was not for the official, but for the auditor to decide what he considered to be a matter on which a special report should be furnished.

# District Societies of Incorporated Accountants.

## BELFAST.

An interesting and informative address on "The Application of Machinery to Office Work," was delivered on January 29th to the members of the Incorporated Accountants' Belfast and District Society, by Mr. W. J. McMillan, Cashier of the Belfast Corporation Gas Department. Mr. D. T. Boyd, President of the Society, presided.

Mr. McMillan said it was essential that all accountants should have a knowledge of the application of machinery to office work, for machines had come to stay, and the next decade would see a complete change-over from the old pen and ink methods. In that revolution, accountants would play a leading part, for their clients would look to them for advice on the best methods to adopt in reorganising their office systems.

There were two points he would like to emphasise. First, that he did not come there to advocate the use of any particular machine. It was up to them to adopt, after due trial and experiment, the machines best adapted to the particular business concerned. The second point was that he did not come there to discuss the problems raised by the introduction of machinery in relation to unemployment. He could only say that the rationalisation of the gas industry had produced an expansion of business resulting in the employment of more persons than ever. In Belfast not a single person had lost his job as the result of the introduction of office machinery.

Mr. McMillan gave an interesting account of the application of machinery to the work of the Gas Department of Belfast Corporation, and dealt with mailing machines, time-recording machines, receipting machines and cash registers. But he said machines by themselves were not enough. Operators must be efficient mentally and properly trained, and, above all, the whole office system must be properly organised and continuously supervised. No matter how many machines were used in the future, good and legible penmanship would always be an asset to its possessor.

## BIRMINGHAM.

Mr. E. T. Brown, Wolverhampton, has been elected President of the Incorporated Accountants' Birmingham and District Society in succession to the late Mr. E. T. Kerr.

## LIVERPOOL.

A meeting of the Society was held on January 25th, at the Victoria Hotel, Southport, to hear an address by Professor G. C. Allen, M.Com., Ph.D., of the University of Liverpool, on "The Future of Industrial Organisation." The Mayor of Southport (Dr. Ernest W. Lewis) was in the chair, and there was a large attendance of members. The guests of the Society included the Town Clerk (Mr. R. Edgar Perrins, LL.M.), the Borough Treasurer (Mr. A. B. Dawson, F.S.A.A.), the President of the Ormskirk and Southport Law Society (Mr. W. A. Cook), the Southport representative of the Institute of Bankers (Mr. W. E. France), the President of the Rotary Club (Mr. P. D. Boothroyd, J.P.), the President of the Southport Chamber of Trade (Mr. Arthur A. Cotterill), the Headmaster of King George V School (Mr. G. A. Millward, M.A.), Councillor W. H. Bellis, LL.B., Mr. J. A. Bond, A.C.A., and Mr. John Wareing (Hon. Secretary, Incorporated Accountants' District Society of North Lancashire).

Professor Allen gave a comprehensive résumé of the industrial changes which had taken place in post-war years, the most significant of which, he said, had been the sharp decline in size of the great staple industries of this country—coal, cotton and steel. The War had only accelerated changes which would, in any case, have taken place. Another factor was the slowing down of the increase in the world's population, together with the technical changes in agriculture, which had made it less necessary to open up new land. The demand for certain classes of goods, which this country had been particularly well fitted to supply, had consequently fallen. The decline in the size of families, too, left a larger part of the family income available for luxuries. This had checked the increase in staple industries and given rise to a number of new trades. Great Britain, although able to hold her own in the older trades, was suffering because she had not been able to obtain a larger share in the newer. In spite of this, the number of people employed was greater than before the War. This was entirely due to the increase of what he called personal service trades. Although great combines would arise, there would always be an important place available in industry for the smaller man, because the provision of personal service was not something in which huge organisations had a great advantage.

## SOUTH WALES AND MONMOUTHSHIRE.

(CARDIFF AND NEWPORT STUDENTS' SECTIONS.)

The annual debate between the Cardiff and District and Newport Students' Sections took place at Newport on February 14th. The chair was occupied by Mr. W. Snelgrove, who was supported by a good attendance of senior and student members of both sections.

The subject for discussion was "That the reduction in wages delays the return of prosperity." The leaders were Mr. C. E. Canlan for Cardiff (taking the affirmative) and Mr. R. Venmore for Newport (taking the negative). Both submitted sound arguments, well thought out and admirably delivered. After an animated discussion the motion was carried.

# Scottish Notes.

(FROM OUR CORRESPONDENT.)

### Meeting of Scottish Council.

A meeting of the Council of the Scottish Branch was held in Glasgow on January 31st. There were present: Mr. J. Stewart Seggie, President of the Branch, in the chair; Dr. John Bell and Mr. W. Davidson Hall, Vice-Presidents; Mr. Walter MacGregor; Mr. John A. Gough; Mr. P. G. Ritchie; Mr. E. Hall Wight; and Mr. James Paterson, Secretary of the Branch.

Apologies for absence were intimated from: Mr. Alexander Davidson, Mr. R. T. Dunlop, Mr. W. L. Pattullo, Mr. D. Hill Jack, J.P., Mr. D. R. Matheson, Mr. E. Mortimer Brodie, and Mr. J. Cradock Walker.

Reports were submitted with reference to a large number of membership matters, and as to the Student Societies in Glasgow, Edinburgh and Aberdeen.

A donation was reported from a member of Council for the purchase of books for the Library.

The annual meeting of the Branch was fixed for March 23rd.

### Solicitors in Scotland.

The Solicitors (Scotland) Act, 1933, which was passed on June 28th, 1933, comes into full operation on March 1st, and the provisions of the Land Agents (Scotland) Act, 1873, and the amending enactments of 1891 and 1896, will be repealed as at that date. When this Bill was before Parliament, certain clauses were strongly opposed, chiefly by the Scottish Branch, on behalf of the accountancy profession, and amendments were made which gave effect to the contentions of the Scottish Council. In the past Scottish solicitors have been described variously as "writers," "law agents," "solicitors," but now they will all be known as "solicitors," and will be under the control of a Council to be known as "The General Council of Solicitors in Scotland." This Council will have the entire management and control of the examinations which apprentices and applicants for admission to the profession will require to pass. The General Council is elected by the Law Societies and groups of societies specified in a Schedule to the Act. The General Council will act as a Disciplinary Committee in certain cases.

### Income Tax—Estate Management.

The First Division of the Court of Session had before them on January 26th an appeal by the Commissioners of Inland Revenue in a case against the executors of the late William Wilson, of Castlehill, Ayr, in which the question was raised as to whether certain expenditure incurred by the respondents in resisting and satisfying a claim by tenants for compensation for a disturbance was a legitimate deduction from rent as assessable to property tax under Schedule A, as being a cost of management of the property. The claim by the respondents was for an allowance of £1,694 for maintenance, repairs, insurance and management. The question was whether expenditure incurred in connection with a dispute between the tenant and landlord arising out of claims and arbitration under the Agricultural Holdings Act were admissible. The Commissioners of the Kyle Division of Ayrshire, by a majority of five to four, held that the compensation for disturbance claimed by the tenants was of the nature of a charge against income as distinct from capital expenditure, in respect that it did not affect the capital value of the subjects, and that the expenses of litigation, by whichever party incurred, were costs of management of the subjects within the meaning of Schedule A of the Income Tax Acts and allowed the claim to the extent of £1,624.

The Division held that the sums claimed were not "costs of management" within the meaning of the Act. The Lord President said the question resolved itself into what was the meaning of "management" under Rule 8 of No. V of Schedule A. It was a question of great difficulty. If "management" were given its larger meaning, maintenance, repairs, and insurance would all be part and parcel of the cost of managing an estate. One seemed driven to the view that the cost of management must be intended to be restricted to factorial costs, if he might so call them. He wished he felt more confidence in arriving at this result than he did. Between the broad and narrow construction he found himself compelled to the view that the narrow construction was the safer and therefore probably the sounder. If it was the correct view then it was quite clear that none of the three constituents of the sum of £1,624 could be held to constitute a legitimate subject of deduction from the payment of Income Tax under Schedule A.

Lord Sands, concurring, remarked that he reached this result with extreme reluctance.

# Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B. :—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Session Cases* (*Scotland*); S.L.T., *Scots Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace* (*England*); L.G.R., *Knight's Local Government Reports*; B.&C.R., *Bankruptcy and Company Cases*.

## COMPANY LAW.

### Re Mutual Property Insurance Company, Limited.

*Alteration of Memorandum of Association.*

By sect. 5 of the Companies Act, 1929, a company may, by special resolution, alter the provisions of its Memorandum with respect to the objects of the company, to enable it to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.

A company carrying on insurance business other than life insurance presented a petition to take power to carry on life insurance business.

The Court of Session held that the company must change its name so as to include a reference to life insurance business.

(C.S. ; (1934), S.L.T., 15.)

### M'Gillivray v. Davidson.

*Slander and Privilege.*

An action for slander was brought against the chairman of a company of and concerning the manager of that company (*a*) to a shareholder, (*b*) at a meeting of directors, and (*c*) to the company's solicitor.

The Court of Session held that in the circumstances each of these occasions was privileged, and that there was no relevant averments of malice, and dismissed the action.

(C.S. ; (1934), S.L.T., 45.)

### Re Metropolitan Cemetery Company.

*Increase of Capital.*

A company presented a petition to the Court praying for the confirmation of special resolutions passed *en bloc* (1) for reduction of capital, (2) increase of capital, and (3) alteration of Articles. The company had no power in the original Articles to increase capital.

The Court of Session confirmed the resolutions except as to increase of capital. It was held that the company must alter its Articles so as to include the necessary power to increase capital and then proceed on its own responsibility and powers.

(C.S. ; (1934), S.L.T., 38.)

### In re Dorman Long & Co.

*Proxies and Shareholders' Meetings.*

Maugham (J.) held that where on an application for sanction to a scheme of arrangement it appears that proxies have been improperly rejected at meetings of the company, fresh meetings may be ordered.

(Ch. ; (1934), L.J.N., 78.)

### In re Beri Felkai Mining Company.

*Expenses of Liquidation.*

Maugham (J.) held that the "expenses of the liquidator" or "expenses incurred in the winding up" of a company, include income tax on profits made by the liquidator in carrying on the business of the company, and such tax is

*prima facie* payable in priority to the liquidator's remuneration.

(Ch. ; (1934), L.J.N., 93.)

## EXECUTORSHIP LAW AND TRUSTS.

### In re Legui.

*Administration with Will annexed.*

The President held that where an estate is insolvent a grant of administration may be made to creditors on the failure of a foreign executor to prove even though the executor has not been cited.

(P. ; (1934), L.J.N., 95.)

## INSOLVENCY.

*Proof of Debt.*

The judges exercising jurisdiction in bankruptcy have directed that when an unstamped proof of debt in respect whereof a fee is payable, is received by a trustee, it is his duty to point out to the creditor that he has omitted to affix to it the bankruptcy stamp, value 1s. 6d., required by Table A of the Scale of Fees, and inform him that in the absence of the stamp the proof cannot be dealt with as proof of debt against the estate.

(Ch. ; (1934), L.T.N., 44.)

### In re Potts.

*Admission of Proof for Purpose of Voting.*

Rule 14 of the First Schedule to the Bankruptcy Act, 1914, provides that the chairman of a meeting of creditors shall have power to admit or reject a proof for the purpose of voting.

Farwell (J.) held that under this rule the chairman of each meeting has power to admit or reject a proof for the purpose of voting, and he is not bound by the decision of the chairman of the first meeting.

(Ch. ; (1934), 50 T.L.R. 193.)

## MISCELLANEOUS.

### R. v. Bedwellty Urban District Council.

*Inspection of Accounts of Local Authority.*

By sect. 247 of the Public Health Act, 1875, a person interested has a right to inspect the accounts of an urban authority not merely personally but through an agent, and, even if he has already exercised his personal right of inspection, he is entitled, if the accounts are of a complicated nature, to inspect them through an accountant.

(K.B. ; (1933), 98 J.P., 25.)

### Phillips v. Italian Bank.

*Indorsement of Cheques.*

A commercial traveller had authority to collect cheques payable to his company from their customers but no authority to cash them. He took five cheques, of which three were indorsed, to a branch of the bank on which they were drawn, indorsing them with the name of his company and with his own name, but without any indication of his relation to the company or his authority. The cheques were cashed by the bank and the proceeds appropriated by the traveller.

The Court of Session held that the bank was liable in payment to the company of the whole amount of the cheques, in respect that the crossed cheques should have been paid only through a bank and that the uncrossed cheques were not indorsed in such a manner as to make the cashing of them a payment in due course.

(C.S. ; (1934), S.L.T., 78.)

## REVENUE

### Attorney-General v. Southport Corporation.

*Entertainments Duty.*

The sea-bathing lake and grounds belonging to the Southport Corporation, in addition to the lake and dressing accommodation for swimmers, for which an admission fee was charged, included additional facilities for non-bathers, such as terraces with seating accommodation giving a view of the bathing lake and the adjoining grounds, a café, &c. The non-bathers were charged for admission.

The Court of Appeal affirmed the decision of Finlay (J.) (see *Incorporated Accountants' Journal*, Oct., 1933, p. 46), and held that as the corporation were not persons responsible for the management of an "entertainment" within the meaning of sect. 1 (6) of the Finance (New Duties) Act, 1916, and as the spectacle of the bathing was merely ancillary to the other amenities provided, the charges of admission to the non-bathers were not subject to entertainment duty.

(C.A. ; (1934), 50 T.L.R., 122.)

### Rossi v. Blunden.

*Allowance for Wife and/or Housekeeper.*

By sect. 18 of the Finance Act, 1920, where a claimant proves that for the year of assessment he has a wife living with him or wholly supported by him during the year of assessment, he will be entitled to a deduction. By sect. 19, where a claimant proves that he is a widower and that for the year of assessment a female relative is resident with him for the purpose of having the charge of any child of his, or in the capacity of housekeeper, he will be entitled to a deduction.

The appellant contended that the receipt by him of a personal allowance as a married man under sect. 18 did not preclude a claim by him to housekeeper allowance for the same year under sect. 19.

Finlay (J.) held that the proper way to construe the sections was to treat them as mutually exclusive. For one year of assessment and for the purpose of assessment in that year a man could not be at once a married man and a widower, and the appeal must be dismissed.

(K.B. ; (1934), W.N., 15.)

### Smith v. York Race Committee.

*Buildings Occupied for Trade.*

By Rule 1 of Schedule B of the Income Tax Act, 1918, "Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule A on all the properties in this Act directed to be charged to the said tax according to the general rule of No. 1 of Schedule A: Provided that there shall not be charged under this Schedule any warehouse or other building occupied for the purpose of carrying on a trade or profession."

Finlay (J.) held that in the case of a racecourse property the lawns and paddocks, which were in the same curtilage as the buildings, were not included in the word "building" in the above proviso and therefore were assessable.

(K.B. ; (1934), 50 T.L.R., 156.)

### In re Paulin (Deceased) ; In re Crossman (Deceased).

*Shares Held Subject to Restrictions.*

By sect. 7 (5) of the Finance Act, 1894, "The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased."

Finlay (J.) held that where shares are held subject to restrictions imposed by the Articles of the company on the power of transfer, the value of the shares is not to be fixed at the price at which under the Articles the shares could be bought by existing members of the company, but is to be estimated at the price which they would fetch if sold in the open market, on the terms that the purchaser should be entitled to be registered as holder of the shares, and should take and hold them subject to the provisions of the Articles of Association, including the Articles relating to alienation and transfer of the shares of the company. If, however, a trust company is likely to be the highest bidder for the shares and the company would not have registered a trust company as a shareholder, the trust company is not to be considered a possible purchaser.

(K.B. ; (1934), 50 T.L.R., 161.)